

英文合同解读

语用、条款及文本范例

Understanding English Contracts

王辉 著



法律出版社
LAW PRESS CHINA

Understanding English Contracts

LEGAL SERIES 1013

您想准确理解法律英语的标志性词汇吗？
——*Hereby / Herein*、*Subject to / Comply with*、*Foregoing / Aforesaid*和*Whatsoever / Howsoever*

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……

从阅读中的准确理解到起草中的灵活运用，本书将全面提升您对英文合同的理解能力与起草技能。



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Preface

Being a Canadian lawyer working in China over the last ten years, I probably have as much as appreciation as most lawyers on the challenges involved in understanding and producing legal documents in a second language. Needless to say, these documents need to be not only accurate and easily understandable, but also produced at reasonable costs and on a within tight timeframes.

During the earlier stages of my legal practice, the concerns were between English and French versions of documents. All documents filed in the province of Quebec, including with its securities commission, need to be in its official language of French. English version of the same documents, which is preferred by most Canadian and international parties, would be filed or used in the other provinces. One has the choice of either language when dealing with the federal government, which recognizes both as the country's official languages.

Now that I am in China, my concerns focus exclusively on the difference between English and Chinese languages. Most of the documents which we work with involve foreign parties in China or Chinese parties in Canada. Given that the differences between English and Chinese are by far greater that those between English and French, the challenges associated with navigating through the former are also much more monumental.

It is important that all the parties in a transaction have the same understanding of the purpose, structures, and terms and conditions of a transaction. Ideally, the transaction documents, when reviewed and executed, serve this purposes. With the parties having different appreciation of the language, the issues and challenges are obvious.

Typically, each party, and their advisors, would be more familiar and comfortable working with the language of its own country and have more limited

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LANGUAGE AND USAGE



第一章 英文合同概述 General Introduction

In view of all this,
we are making a binding agreement,
putting it in writing,
and our leaders,
our Levites and our priests are affixing their seals to it.

(Nehemiah 9:38, *BIBLE* NIV)

因这一切的事,
我们立确实的约,
写在册上。
我们的首领,
利未人,和祭司都签了名。

(尼西米记 9:38,《圣经》新国际版)

合同,古称契约(港台现仍多用此语)。"契"者即证券,证明买卖、抵押、租赁等关系的文书,如契据、房契等。古代典籍中常见此语,如《易·系辞》就有"后时圣人易之以书契"。"约"者即共同商定的事,共同议定要遵守的条文,如和约、条约等。《三国演义》中就有"昔高祖约法三章,黎民皆感其德"。

西方早在《圣经》中就有关于上帝在西乃山与以色列人立约的记载。诺亚方舟就是借上帝与诺亚的契约而建造的。But with thee will I establish my covenant; and thou shalt come into the ark, thou, and thy sons, and thy wife, and thy sons' wives with thee.[1](但我要与你立约,你以及你的儿子、妻子和儿媳,要与你一同进入方舟。)

第一节 合同与协议(Contract and Agreement)

在现代英语合同中,合同一般称为 contract,协议一般称为 agreement。那么 contract 和 agreement 是一回事吗?它们之间又有什么关系呢?《中华人民共和国民法通则》第 85 条规定:"合同是当事人之间设立、变更、终止民事关系的协议。"(A contract shall be an agreement whereby the parties establish, change or terminate their civil relationship.)《中华人民共和国合同法》第 2 条规定:"合同是平等主体的自然人、法人、其他组织之间设立、变更、终止民事权利义务关系的协议。"(Contracts referred to in this Law are agreements between equal natural persons, legal persons and other organizations for the purpose of establishing, altering and terminating mutual civil rights and obligations.)

《美国法律重述合同法第二次汇编》(*Restatement(Second) of Contracts, Section 1*)将合同定义为:"A contract is a promise, or a set of promises, for breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty."(合同乃为一个允诺或一组允诺。违反此一允诺时,法律给予救济;或其允诺之履行,法律在某些情况下视之为一项义务。)这一定义亦为 Steven H. Gifts 所编著的 *Law Dictionary* 完全引述。但一般而言,contract 乃两个以上当事人间具有法律约束力之协议,或由一个以上当事人所为一组具有法律约束力之允诺。(A contract is a legally binding

[1] thee 在古英语里表示 you 的宾格形式。thou 在古英语里表示 you 的主格形式,相当于汉语中的汝,尔,你。thy 则是 thou 的所有格形式。shalt 为古英语用法,相当于现代英语中的 shall。

agreement between two or more parties or a set of legal binding promises made by one party or more. See G. C. Lindsay, *Contract*, *3rd Ed.* 1992)。这一表述在 L. B. Curzon 编撰的 *Dictionary of Law* 中被概括为“A legally binding agreement creating enforceable obligations”。Chris Turner 在其编撰的 *Contract Law* 中对 contract 所做的定义更为具体明了。他认为“合同”就是“an agreement between two parties by which both are bound in law and which can therefore be enforced in a court or other equivalent forum”。(对合同方具有法律上约束力,可由法院或其他同等管辖地强制执行的协议。)

在 *Black's Law Dictionary*(*8th Ed.*)中对 contract 的定义多达 8 项:

(1) An agreement two or more parties creating obligations that are enforceable or otherwise recognizable at law;

(2) The writing that set forth such an agreement;

(3) A promise, or a set of promises, for breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty; (作者注:与《美国法律重述合同法第二次汇编》中“contract”的定义相同。)

(4) Broadly, any legal duty or set of duties not imposed by the law of tort; esp., a duty created by a decree or declaration of a court;

(5) The body of law dealing with agreement and exchange;

(6) The term of an agreement or any particular term;

(7) Loosely, a sale or conveyance;

(8) Loosely, an enforceable agreement between two or more parties to do or not to do a thing or a set of things; a compact.

至于 agreement, L. B. Curzon 的 *Dictionary of Law* 将其定义为:“A consensus of minds, or evidence of such consensus, in spoken or written form, relating to anything done or to be done.”(是对已做和待做的有关事宜以口头或书面形式做出的相同意思表示或该意思表示的证据。)

Black's Law Dictionary (*8th Ed.*) 对 agreement 下了两个定义:(1) A mutual understanding between two or more persons about their relative duties and obligations regarding past or future performances; a manifestation of mutual assent by two or more persons. (双方或多方就过去或将来的相关职责和义务的履行而达成相互的理解;双方或多方相互达成一致的表现形式。)(2) The Parties' actual bargain as found in their language or by implication from other circumstances, including course of dealing, usage of trade and course of performance. (即当事人通过语言或其他情形暗示而确立的实际约定,包括交

易常例、贸易习惯以及履行惯例。)

Contract(合同)和 Agreement(协议)到底能不能相互替换呢?让我们来看看英文合同相关书籍和词典的说法。

Chris Turner 在其编撰的 *Contract Law* 中将合同的成立表述为三个基本要素,即:(1) Agreement—based on mutuality over the terms, agreement exists when a valid acceptance follows a valid offer; (协议:基于要约与承诺形成对条款的相互一致而存在;) (2) Consideration—given by both sides, the quid pro quo[1], and the proof that the bargain exists; (约因:双方付出的对价及对价存在的证据;) (3) Intention to create legal relations—since a contract is legally enforceable, unlike mere gratuitous promises. (设立法律关系的意愿:合同具有法律上的执行力,不同于纯粹的无偿赠与的允诺。)

这里也是用 agreement 来解释 contract 的,认为合同是一种符合一定条件的协议。

在英语法律用语中虽然多用 agreement 来解释 contract,其实也有偶用 contract 解释 agreement 的情形,如:Agreement... (2) A contract (*The Law Dictionary*)。我们甚至可以找到 agreement 和 contract 在同一句中交替使用的实例。如:If the contract contains an innocent mistake, you can get out of the agreement if the mistake is important.[2]

Black's Law Dictionary(*8th Ed.*)对 agreement 和 contract 的关系做出了精辟的阐述,指出"每一份合同均是一份协议,但是并非每一份协议均构成一份合同"。(Every contract is an agreement, but not every agreement is a contract.)该辞典进一步指出:"协议一词,就口语意义而言,包括意在影响两人或者多人间相互关系而作出的任何安排,无论该等关系是法律关系还是其他关系。"[In its colloquial sense, the term "agreement" would include any arrangement between two or more persons intended to affect their relations (whether legal or otherwise) to each other.]

综上所述,我们不难看出,汉语的法律用语仅用 agreement 解释 contract,而英语的法律用语往往不很严格,多用 agreement 解释 contract,但也有用 contract 解释 agreement 的情形,虽说大多情况 contract 与 agreement 有所区别,有时候两者还可以作为同义词互换使用。可以说 contract 都是协议,但协议不一定就是 contract。但就广义的协议和合同来讲,还是有区别的:

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[1] 拉丁语,即 What for What,相等的补偿或者报酬;交换条件;对价。

[2] *What Should I Know About Contracts*, *The State Bar of California*, 2_{nd} Ed. *1984*.

1. 从成立的宗旨上看,协议十分宽泛,不囿于为了当事人间形成法律或其他关系,即便是为影响当事人的义务也未必形成严格意义上的合同关系,如不动产转让或动产赠与。

2. 从内容、条款上看,合同较为具体、详尽,着眼于微观;而协议则较为原则、粗疏,致力于宏观。实践中往往合作方就某一项目达成协议对有关原则问题做出约定,然后在此基础上签订合同,再全面明确各项具体的细节。

3. 从涉及范围上看,合同的标的往往比较单一集中,也很明确,通常都是一事一议,就事论事;而协议的标的往往比较广泛,一项大型项目的协议往往包括或分解成若干个具体的合同。

4. 从书写格式上看,合同已基本格式化了,大家可以看到许多的合同模板;而协议的格式相对灵活一些,没有什么固定的格式。

狭义的协议则和合同并无分别,只是用语上和习惯上的称呼而已。

第二节 合同的种类与名称(Categories and Titles)

一份英文法律文件到底是不是英文合同,就要看它的内容是否符合合同的要求。一般而言,合同不外乎包括人、事、时、地、物五大要素,也就是4W1H(Who, When, Where, What, How),如果你手上的文件内容包括了这五项要素而且签署生效,该文件就应该具有了合同的性质,而不论它是以何面目出现的。常见的英文合同名称可分为以下四大类:

一、合同、协议(Contract, Agreement)

文件名称直接标明Contract或Agreement是最常见的英文合同。《中华人民共和国合同法》第九章至第二十三章就合同种类做了概括,它们分别是买卖合同(Sales and Purchase Contracts);供用电、水、气、热力合同(Contracts for Supply of Power, Water, Gas and Heat);赠与合同(Gift Contracts);借款合同(Loan Contracts);租赁合同(Lease Contracts);融资租赁合同(Lease-Finance Contracts);承揽合同(Contracts for Work);建设工程合同(Construction Project Contracts);运输合同(Contracts of Carriage);技术合同(Technology Contracts);保管合同(Deposit Contracts);仓储合同(Warehousing Contracts);委托合同(Mandate Contracts);行纪合同(Commission Agency Contracts);居间合同(Brokerage Contracts)等十五大类。

常见的协议有委托代理协议(Agency Agreement)、合伙协议(Partnership Agreement)、股份转让协议(Shares Purchase Agreement)、保密协议

(Confidentiality Agreement)、竞业禁止协议(Non-competition Agreement)、聘用协议(Employment Agreement)等。

二、意向书(Letter of Intent)

有的文件名称标为“Letter of Intent”(简称LOI,通常翻译为“意向书”)、“Memorandum of Understanding”(简称MOU,通常翻译为“谅解备忘录”),甚至只称为“Memorandum”(简称Memo,通常称之为“备忘录”)。另外,也有标为“Minute of Talks”(会谈纪要)的文件。

这些法律文件往往是当事人双方在商洽合作中形成的,可以称之为准合同文件(quasi-contract)。这些准合同文件从名称上看似乎不是合同或者协议,但如果经当事人签订,即具有一定的法律约束力,甚至当事人会在没有形成正式的合同或协议之前就直接依据这些准合同文件进行实质性合作,从而赋予这些文件合同或协议的性质。由此可见,合同的效力不能被其名称所拘束。如果上述法律文件完整明确地记载了交易的条款,且当事人依据该条款内容履行并达成交易目的,那么这些法律文件就应当被认定为双方达成的合同或者协议。

三、契约(Covenant, Indenture, Deed, Compact,Protocol)

Covenant 主要指不动产转让的合同或证明文件。英文合同如果基于传统英美法对价的存在,也会使用这个词来表示双方达成的契约。如:In consideration of mutual premises and covenants herein contained, the parties hereto agree as follows.

Indenture 为契约、契据,corporate indenture 则指公司发行债券的契约文件。

Deed(契据)为签名后盖上印章的书面合约。在合同法中,对价是一个有效合约的必备元素。但若该合约以契据形式签署则被视为满足对价要求。

Compact 多用于国家间的协议、协定。例如,联合国的《全球协定》(Global Compact)。

Protocol 通常翻译为草约或者议定书,往往也是双方会谈结果的文字依据。经双方签字后,即受其约束,对草约内容承担法律责任,如果需要补充、修改、完善,双方还会签订补充的协议。如我们耳熟能详的《中国加入世界贸易组织的议定书》(Protocol on the Accession of China)。

四、其他书函(Letter, Waiver, Guaranty, Power of Attorney)

英文合同有时候非常简短,形式上就像信函一样,姑且称之为书函类的英文合同,常常用"Letter"(函)、"Waiver"(弃权书)、"Guaranty"(保证书)和"Power of Attorney"(委托书)等简单明确的字眼作为合同的名称。相对于Agreement或Contract,书函类的合同一般具有补充或附属的性质,且经常出现在Agreement或Contract的附件中。当然书函类的合同对双方当事人也有完全的拘束力。

本书撰写的方式,是针对名称为"Agreement"(狭义)或"Contract"类型的合同文件做阅读方法的说明,其原因即在于此类文件的合同结构复杂而内容完整,读者若能掌握阅读此类合同的要领,阅读其他类型的英文合同时自然就驾轻就熟了。





第二章　英文合同的特色
Features of English Contracts

Form follows function.

(*motto of the Bauhaus school of architecture*)

形式服从功能。

（鲍豪斯建筑学院校训）



与基础英语相比,作为专业性极强的语言,英文合同的用语不同于日常语言,具有显著的特点。首先,句子冗长而且复杂,似乎总也找不到句号,用词偏僻,晦涩难读,不易理解。其次,英文合同中往往沿用拉丁语、法语的法律术语,像中文的文言文似的,着实是佶屈聱牙,令人痛苦不堪。再次,由于属于专业英语的范畴,英文合同必然涉及法律方面理解,阅读者除了语言本身的能力外,对于法律,尤其是英美法应具备一定的了解。毋庸多言,需要相应的专业知识,这是所有专业英语的共性。

下面就是 Plain English Campaign[1](直白英语运动组织)所遇到的最长的英文合同的句子,有兴趣的读者不妨看看到底是什么意思:

In the event that the Purchaser defaults in the payment of any installment of purchase price, taxes, insurance, interest, or the annual charge described elsewhere herein, or shall default in the performance of any other obligations set forth in this Contract, the Seller may: at his option: (a) Declare immediately due and payable the entire unpaid balance of purchase price, with accrued interest, taxes, and annual charge, and demand full payment thereof, and enforce conveyance of the land by termination of the contract or according to the terms hereof, in which case the Purchaser shall also be liable to the Seller for reasonable attorney's fees for services rendered by any attorney on behalf of the Seller, or (b) sell said land and premises or any part thereof at public auction, in such manner, at such time and place, upon such terms and conditions, and upon such public notice as the Seller may deem best for the interest of all concerned, consisting of advertisement in a newspaper of general circulation in the county or city in which the security property is located at least once a week for Three successive weeks or for such period as applicable law may require and, in case of default of any purchaser, to re-sell with such postponement of sale or resale and upon such public notice thereof as the Seller may determine, and upon compliance by the Purchaser with the terms of sale, and upon judicial approval as may be required by law, convey said land and premises in fee simple to and at the cost of the Purchaser, who shall not be liable to see to the application of the purchase money; and from

〔1〕 Plain English Compaign 系由 Chrissie Maher 女士于 1979 年在英国发起设立的民间组织,该组织致力于政府公文等所谓的官样文章(gobbledygook)的直白化,以便普通民众明白易懂。

the proceeds of the sale:FIRST, to pay all proper costs and charges, including but not limited to court costs, advertising expenses, auctioneer's allowance, the expenses, if any required to correct any irregularity in the title, premium for Seller's bond, auditor's fee, attorney's fee, and all other expenses of sale occurred in and about the protection and execution of this contract, and all moneys advanced for taxes, assessments, insurance, and with interest thereon as provided herein, and all taxes due upon said land and premises at time of sale, and to retain as compensation a commission of five percent (5%) on the amount of said sale or sales; SECOND, to pay the whole amount then remaining unpaid of the principal of said contract, and interest thereon to date of payment, whether the same shall be due or not, it being understood and agreed that upon such sale before maturity of the contract the balance thereof shall be immediately due and payable; THIRD, to pay liens of record against the security property according to their priority of lien and to the extent that funds remaining in the hands of the Seller are available; and LAST, to pay the remainder of said proceeds, if any, to the vendor, his heirs, personals representatives, successors or assigns upon the delivery and surrender to the vendee of possession of the land and premises, less costs and excess of obtaining possession.

英国 Plain English Campaign 几十年来一直致力于各种公文的直白英语化,而反对各种官样文章(gobbledygook)。1999 年英国颁布实施的消费者不公平术语法(Unfair Terms in Consumer Contracts Regulations)也要求消费者合同的术语必须用直白明了的语言(plain and intelligible language)。该法还要求这些术语必须是易读的,意味着要用清晰的设计和排印(clear design and typography)。类似的法律也在欧盟的国家适用。

在美国,纽约州率先颁行直白语言法要求消费者合同(包括房屋租赁合同)的语言"clear and coherent",其他各州也颁行了类似的法律,如宾夕法尼亚州就要求消费者合同"shall be written and organized and designated so that they are easy to read and understand"。

尽管如此,*Law Dictionary* 的作者 Steven H. Gifts 先生在该词典的前言还是感叹道:"... the special language of the law remains a barrier to nonlawyers. To the extent that this promotes the economic health of the profession, maintains its aura, and prevent unauthorized practice of the law, it may be regarded as a virtue."大意是说,法律专业语言对律师以外的人士来讲,仍然是一道壁垒。从促进行业经济的健康发展、保留行业特点和防止未经授权进行律师执业等

方面考虑,可以把这种语言壁垒看做是一种行业优势。

作为大陆法系的非英语国家,面对加入 WTO 后全球经济一体化的严峻挑战,中国应该怎样应对各类国际交往和国际贸易中纷繁复杂的英文法律文件呢?尽管 Plain English(直白英语)似乎是大势所趋,但法律英语直白化不是一蹴而就的事情,即便经过多年的普法工作,法律语言也不是普罗大众所能轻易理解和运用的。所以,与其坐而论道法律英语直白化,不如行而学习研究英语合同格式和用语,在这个意义上,拿来主义是必需的。不通晓现行广泛使用的英语合同,何谈取其精华,去其糟粕,何谈根据实际情况对其进行革新与发展,化为己用呢?

以下针对英文合同的特色,拟从篇章结构、遣词用语、句式结构以及时态语态四大方面进行说明:

第一节　篇章结构特点(Text Structure)

一份完整的英文合同通常可以分为标题(Title)、前言(Preamble)、正文(Habendum)、附录(Schedule)及证明部分即结尾词(Attestation)五大部分。标题开宗明义地显示合同的性质;前言用最简单的说明大略介绍合同订立的背景;正文里包括依各种合同性质的不同而约定的具体条款,还包括不论何种类型合同都会出现的一般条款;附录构成对前述合同正文条款的必要补充(不是所有合同都有该部分);最后,结尾则是当事人签名前的一段文字,为整份合同画上完满的句号。以下分别就此五部分进行说明。

一、合同的标题(Title)

英文合同和中文合同都一样,标题并不是一定要有的,因为当事人间的法律关系是用合同内容的各个条款来判断,标题基本上不会产生任何影响。但为方便辨识的考虑,合同撰写人通常都会依照合同性质,在合同首页的最上方给予一个适当的标题。英文合同名称在第一章中已有介绍,在此不再赘述,仅补充说明:Confirmation(确认书)、Order(订单)也会经常出现在简易的合同中。

二、合同的前言(Preamble)

英文合同在标题之后,各式各样的条款出现之前,通常会先有一段前言,也称序言、导言、总则等,也见有称为"Non-operative part"者。前言一般不会占去太多的篇幅,目的在于很简略地介绍合同内容之人、事、时、地、物等背景,

让阅读合同的人在接触冗长复杂的正文前,先有一个基础的认识与心理准备。详细来说,前言通常又分作以下两个段落:

第一部分文字叫做“Parties”,也就是合同的开场白(Commencement),内容为说明当事人姓名或名称、国籍或注册地国及住所地或主营业地、订约日期、各自在合同中的简称等等。

EMPLOYMENT CONTRACT (SALES)
EMPLOYMENT AGREEMENT is made and entered into on ________ day of ________ (month), ________ (year), by and between: ________ (hereinafter referred to as the "Company"), a corporation organized and existing under the laws of the State of ________, with its registered office located at ________, and ________ (hereinafter referred to as the "Employee"), an individual, with nationality of ________ (Passport No. ________) residing at ________.

本聘用协议于______年____月____日签订,双方当事人为:
依________州法律组织设立并存续的________公司(以下简称本公司),注册地位于________,与________国籍的________(护照号码:________)(以下简称雇员),居住于______________。

• by and between

表示合同是由哪些当事人所订定。英文中通常会说“This Agreement is made by and between...”,用“by”来表示合同由谁订定,“between”来表示谁与谁之间的订立。如果当事人不止两个,也可以用“by and among”来代替。

• organized and existing

合同开场白里要说明当事人的国籍,在自然人的情况下可以用“a national of ...”或“an individual with the nationality of ...”来表示,如果是法人组织多半使用“organized and existing under the laws of ...”这样的字眼,其中“organized”也可以用“incorporated”来代替。

• registered office

“registered office”是指一个公司的注册所在地,它和“principal office”或“principal place of business”即主营业地并不一定位于同一个地方。

第二部分叫做"Recitals",是由数个以"Whereas"字样开头的句子所组合而成,这些句子俗称为"Whereas Clauses"(鉴于条款)。"Whereas"的本义是"When in fact"、"considering that"或"that being the case"的意思,所以"Whereas Clauses"就表示当事人乃是基于对这些事实(例如订约的目的、背景、原由等)的共同认识,订立此合同。以下是一个补偿贸易合同(Compensation Trade Contract)的Whereas Clauses,简单明了地表达了双方合作的意愿。

WITNESSETH

Whereas Party B has machines and equipment, which are now used in Party B's manufacturing of steel wire rope, and is willing to sell to Party A the machines and equipment; and
Whereas Party B agrees to buy the products, steel wire rope, made by Party A using the machines and equipment Party B supplies, in compensation of the price of the machines and equipment, and
Whereas Party A agrees to purchase from Party B the machines and equipment, and
Whereas Party A agrees to sell to Party B the products, the steel wire rope, in compensation of the price of Party B's machines and equipment;

兹证明(通常不译)

鉴于乙方拥有用于生产钢丝绳的机械设备,愿向甲方出售该机械设备;
鉴于乙方同意购买甲方用乙方所供应的该机械设备生产的产品钢丝绳来补偿该机械设备的价款;
鉴于甲方同意从乙方购买该机械设备;
鉴于甲方同意向乙方出售产品钢丝绳以补偿乙方机械设备的价款;

紧接在一串Whereas Clauses之后,会出现类似上例中的"Now therefore, in consideration[对价/约因(港台多用此语)] of..."这样一句话,表明合同是有偿合同,目的在提醒阅读合同的人,真正规范订约当事人权利义务关系的条

款在这句话之后就要开始了，也就是说，这句话是前言与正文之间过渡的桥梁，在此之前为订约背景事实的叙述，在此之后则为关于交易关系的实体约定（一般称为"operative part/clauses"）。

例如：Now therefore, in consideration of the premises and covenants described hereinafter, Party A and Party B agree as follows:...

兹以上述各点和契约所载条款为约因，订约双方协议如下：……

三、正文（Hanbendum/Operative part）

正文（Hanbendum）部分，也称 Operative part/clauses 或 Body，具体约定当事人的权利义务。各式各样的正文条款是合同中最核心的部分，也是篇幅最大的部分，与当事人的权利义务关系发生最直接、最密切的牵连。

本书拟将英文合同中的正文条款分为两类：特殊条款与一般条款。所谓特殊条款指的是只有在某些特定性质的合同中才会出现的条款，例如劳动合同中通常会约定保密条款、竞业禁止条款，但是买卖合同就不会有这些约定。反过来说，买卖合同中一般要记载交易标的、交易条件等条款，在劳动合同中就不会出现。

相对于特殊条款的所谓一般条款，指的是不论合同性质如何，几乎所有的合同中都会记载的条款，例如管辖法院的约定、违约条款等，将于第四章中详细介绍，在此亦不赘述。

四、附录（Schedule）

附录也称 Addendum, Annex 或 Exhibit，也有用 Attachment, List 或 Table 表示的。附录部分作为对正文条款的补充，不是所有英文合同都有的一项。以下就是一份聘用协议的附录，对该公司聘用的经理职责作出补充说明：

THE SCHEDULE ABOVE REFERRED TO

1. To manage, maintain and promote the business of the Company.
2. To attend personally during the usual hours of business and to supervise and control the business and to be accessible to customers and employees of the Company.
3. To keep the usual books of account.
4. To pay daily all money received in the business into the Company's bank account.

5. Generally to protect the interests of the Company.

上文提及的附录是指:
1. 管理、维持并促进公司的经营。
2. 亲自参与公司的日常经营,监管经营,对本公司的客户和员工平易亲和。
3. 保管日常账册。
4. 支付日常公司经营到账的款项。
5. 广泛地保护公司的利益。

此外,即便是有这部分的英文合同,也经常因为附录的内容庞杂、篇幅较长而放在合同的最后单独列明,如有关的图表或者其他法律文书。下文就是单独列在合同后的附录的一个信用证:

EXHIBIT B: Letter of Credit
XYZ BANK LIMLTED
[Address]

Credit Bank, N. A.
International Banking Facility
Los Angeles, California 90000 U. S. A.
Date:
Letter of Credit No.:
Gentlemen:

We hereby establish this irrevocable letter of credit in your favor for account of ABC Company in the amount of US $ ________(amount in words), available against your draft(s) drawn at sight on Credit Bank, N. A., Letter of Credit Department, Los Angeles, California, accompanied by your signed and dated statement as follows:

"The amount drawn under Letter of Credit No. [_______] dated [_______] issued by XYZ Bank Limited on behalf of ABC Company is payable to the undersigned pursuant to the terms of that certain Loan Agreement dated as of _______, _______, between ABC Company and Credit Bank. N. A."

All drafts drawn under this Letter of Credit must bear the clause "Drawn under XYZ Bank Limited Letter of Credit Number _______, dated _______, _______".

Partial drawings are permitted.

We hereby engage with the drawers, endorsers and bona fide holders of drafts drawn under and in compliance with the terms of this Letter of Credit that the drafts will be duly honored if drawn and presented to the above drawn in Los Angeles, California, on or before [Expiry date 30 days after the final Installment Payment Date].

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (1983 Revision), International Chamber of Commerce, Publication No. 400.

Special Instructions to Drawee Bank

In reimbursement for any payment made by you hereunder, you may debit our account with you.

XYZ BANK LIMITED
BY __________
(Authorized Signature)

附件 B:
XYZ 银行
地址:

北美信贷银行
国际银行业务部
美国加利福尼亚洛杉矶,90000
日期:
信用证号码:

________先生

我行在此开立,以 ABC 公司为受益人、总额为________美元的不可撤销信用证,凭交加利福尼亚洛杉矶北美信贷银行信用证部开出的即期汇票付款。并附有贵行签署、具名日期的如下声明:
"由 XYZ 银行代表 ABC 公司________年____月____日开立的第________号信用证项下款项系根据 ABC 公司与北美信贷银行________年____月____日订立的某贷款协议条款规定,付与签字人。"
本证项下开具的汇票须注明"本汇票系凭 XYZ 银行________年____月____日第________号信用证下开具"的条款。

允许部分提款。

凡根据本证开具与本证条款相符的汇票,如按时开具提交我行,我行保证对出票人、背书人和善意持有人不迟于最后分期付款日后 30 天内承担付款责任。

本信用证系根据国际商会第 400 号出版物跟单信用证统一惯例与实务(1983 年版)缮制。

付款行特别指令

贵行本信用证项下所付款项,记入我行与贵行的借记账户。

XYZ 银行
授权签字

五、证明部分(Attestation)

英文合同结构中的最后一个部分就是结尾辞,即证明部分与当事人的签名。所谓结尾辞指的是在当事人签名之前经常会出现的一段文字,相当于中文合同中"双方签字盖章,特此为证"。除了表明签名人确实为正当授权的代表外,还会具明签名的日期。至于签名档的部分,如果当事人是公司的话,除了代表人的签名以外,还要加盖公司印鉴,并且通常会注明代表人的职务(title)。

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by duly authorized representatives of both parties on the date and year first written above.

____

By:	By:
Title:	Title:

本协议由被授权之人,于本协议上述所记载日期,代表双方当事人缔结生效之,特此为证。

____

代表人:	代表人:
职务:	职务:

• in witness whereof

这三个词是英文合同结尾辞的标准模式,实体上讲并没有什么特别的功

能或意义,与中文合同里最后通常会记载的"恐口说无凭,特立契为证"很类似,也有用"IN TESTIMONY WHEREOF"代替,有时候也会用"INTENDING TO BE LEGALLY BOUND"代替,意思也是一样的。

- duly authorized representatives

当合同之当事人为法人组织时,必须推选出一位自然人作为法定代表人,例如,公司的法定代表人通常会是董事长,代表公司对外签订合同,建立权利义务关系。除了董事长根据法律当然具备对外代表公司的许可权之外,公司董事会也可以通过决议授权某一个董事、总经理或其他重要职员作为公司签约的代表人,此时与公司签约的对方当事人为了确保这个代表人的确属于"duly authorized representative",可以要求公司提供这个授权的董事会决议证明,以妥善保护自己的权益。下面就是一个董事会对采购员的授权决议:

BOARD OF DIRECTORS' RESOLUTION
DESIGNATING A PURCHASING AGENT

Pursuant to a duly made, seconded, and carried motion the Board of Directors of ________ ________ (hereinafter referred to as Corporation) adopted the following resolution by a unanimous vote:

RESOLVED, that ________ is hereby appointed Purchasing Agent of this Corporation with limited authority to make purchases in the Corporation's name and behalf. Under no circumstances will the Purchasing Agent have real or apparent authority to make a purchase for the Corporation if the dollar amount of said purchase or the total dollar amount of an installment purchase will exceed the amount of ________ dollars ($ ________).

I The undersigned, ________, certifies that he or she is the duly appointed Secretary of ________ Corporation and that the above is a true and correct copy of a resolution duly adopted at a meeting of the directors thereof, convened and held in accordance with law and the Bylaws of said Corporation on ________, (Date) and that such resolution is now in full force and effect.

IN WITNESS THEREOF, I have affixed my name as Secretary of ________ ________ Corporation and have attached the seal of ________ ________ Corporation to this resolution.

Dated:________________________________

Secretary:
Seal:

董事会决议:
任命采购员:
就已第二次提起到董事会的动议,本公司董事会全体一致通过如下决议:

兹决议,本公司授权________为本公司采购员,以本公司名义代表本公司对外采买。但其单笔采购金额或分期购买的总额不得超过________美元。超过该数额该采购员概无真实或表见代理权。
我,签字人,证明________,他/她是本公司正式任命的秘书,以上是本公司董事会决议的真实准确的副本,该决议系按法律和本公司章程在________年____月____日召开的董事会上正式通过,现完全有效。

作为公司秘书,我签字并盖公司印鉴于该决议,特此为证。

日期:________年____月____日

秘书:(签字)
公司印鉴:(盖章)

- the date and year first written above

如果合同结尾辞里注明的日期和合同前言所载明的日期相同,就用这句话表示,如果不同的话,就应该另以条款明定合同生效日(Effective Date),以免产生争议。如下例:

After this contract is signed by the duly authorized representatives of both parties, both parties shall submit the contract to their governments or Boards of Directors for approval. The date when the later party obtains the approval shall be taken as the effective date of the contract. Both parties shall attempt to get the contract approval within 60 days from signing and notify by telex or cable the other party of the approval which is confirmed by the following registered air-mail letter.

本合同经双方正式授权代表签署后,应提交各自政府或董事会批准。以后一方获得批准日期为本合同生效日。双方应尽力在合同签署后60日内获得批准并以电传或电报形式通知该批准,随后以航空挂号邮件确认。

第二节 遣词用语特点(Wording and Expression)

作为正式法律文件,英语合同在用词方面极其考究,要求选词专业(professional)、正式(formal)、准确(accurate)。具体体现如下:

1. 专业性术语(Technical Terms/ Terminology)

法律专业性术语是在合同等法律文件中才用到的词汇,它并不以一般受众为对象,而针对专业人士,力求使语言表达准确无误。中文合同中常见的诸如"瑕疵"(defect)、"救济"(remedy)、"不可抗力"(Force Majeure)、"管辖"(jurisdiction)等专业用词就已经让非专业人士大惑不解,英文合同的专业用词自然就更玄妙无比了。具体的实例如下:

- Without prejudice to the parties' rights under Clause 18. 1, the indemnities provided for in Clause 16. 1 and/or 16. 2 and/or 16. 3 shall be the sole compensation for the damages caused by such delays. 不妨害18.1款双方的权利,16.1、16.2及16.3款规定的赔偿应为上述延误引起损害的唯一赔偿金。indemnities 较 compensation 专业,此处用 compensation 解释了 indemnities。
- Any such assignment, transfer or conveyance shall be without other consideration than the mutual covenants and considerations of this agreement.
  任何转让除根据本协议相互契约和对价外不得考虑其他。
  Transfer, assignment 和 conveyance 都有转让的含义,其中 assignment 和 conveyance(多用于不动产)尤为专业。
- We advise you of our intention to terminate our tenancy on or before ________ (Date) and to deliver to you full possession of the premises. 我方不迟于某日

期通知你方终止租约并交还房屋全部所有。

Tenancy 指房屋租赁的租约,而 premises 指租赁的房屋及其附属物,都是专业用语。

- Licensee agrees to pay to Licensor a minimum royalty of ________ Dollars ($ ________) as a minimum guarantee against royalties to be paid to Licensor during the first contract term, said minimum royalty to be paid on or before the last day of the initial term hereto. 受许可方同意支付许可方最低使用费________美元作为该许可合同第一期使用费的最低保证金,该最低使用费不迟于本合同的入门期最后一天支付给许可方。

  Royalties 在许可合同中专指特许权使用费。

- Price of the Contract shall be calculated on Royalty in accordance with the content and scope stipulated in Article 2 to the Contract and shall be paid in ________. 按照第 2 条规定的内容和范围。本合同采用提成方式计算价格,计价的货币为________。

  与上例不同的是,这里的 royalty 指的是许可合同计价方式的一种即提成计价(royalty price),相对于统包价格(lumpsum price)。

- Default in observing or performing any of the covenants or agreements of debtor set forth in any collateral document of security given to secure indebtedness hereunder, and the continuation of such default beyond any period of grace specified in any such document. 借款人未能履行契约或附带的担保文件列明的协议,并且该违约的持续超过上述文件规定的宽限期。

  在借款合同中 grace 专指宽限期,而不是普通英语的其他意思。

- Furthermore, the parties agree that the following situations shall be considered as exceptional circumstances which justify the earlier termination by the other party: bankruptcy, moratorium, receivership, liquidation or any kind of composition between the debtor and the creditors, or any circumstances which are likely to affect substantially one party's ability to carry out his obligations under this contract。此外,双方同意以下条件应认为是对方合理提前终止合同的例外情形:破产、延付令、破产在管、清算或其他债权人和债务人任何形式的和解,或任何可能对一方履行合同项下义务能力造成实质影响的情形。

  此处的 composition 显然不是普通英语中"作文"的意思,而是指破产和解。

- In addition, upon request of the Board and if the Liquidating Trustee determines that it would be imprudent to dispose of any non-cash assets of the Company, such assets may be distributed in kind to the Members in lieu of

cash, proportionately to their right to receive cash distributions hereunder. 另外,应董事会请求且如果清算托管人确定处理本公司非现金财产非明智之举,该财产可按各成员根据合同项下收取现金份额的权利以实物形式替代现金进行分配。

In kind 此处与 in cash 相对,通常用于合资、合伙协议中表示"以实物出资",本句中是以实物分配清算。In lieu of 表示"替代",相当于基础英语中的 instead of。

- The Buyer shall establish the covering letter of credit before the date specified in Clause Three of this Sales Confirmation, failing which the Seller reserves the right to rescind without further notice, or to accept whole or any part of this Sales Confirmation not fulfilled by the Buyer, or to lodge a claim for losses sustained, if any. 买方须于销售确认书第3条所规定的日期之前开出本批交易的信用证。否则,售方有权不经通知取消本确认书,或接受买方对本销售确认书未履行的全部或一部分,或对因此遭受的损失提出索赔。

  Reserve 为专用词汇,我们常见的"版权所有"英语表达就是 All rights reserved。Rescind(取消合同/协议)和 lodge[提出索赔,与 claim(s)连用]也都是专业用语。

- In case one party desires to sell or assign all or part of his investment subscribed, the other party shall have the preemptive right. 如一方欲出售或转让其所投资的部分或全部,另一方应有优先购买权。

  Assign(其名词形式 assignment)和 Preemptive 属专业用语。

2. 正式用语(Formal Terms)

英文合同,习惯采用书面的形式,合同往往使用正式的书面用语,较少使用口头用语,以显示合同正规、严肃。具体实例如下:

- At the request of Party B, Party A agrees to send technicians to assist Party B to install the equipment. 应乙方要求,甲方同意派遣技术人员帮助乙方安装设备。

  Assist 较 help 正式。

- The personnel shall not to partake in any political activities in Iraq. 所有人员不得参加伊拉克国内的任何政治活动。

  Partake in 较 take part in 正式。

- The Employer shall render correct technical guidance to the personnel. 雇主应该对有关人员给予正确技术指导。

Render 较 give 正式。

- Party A shall repatriate the patient to China and bear the cost of his passage to Guangzhou. 甲方应将病人遣返中国并负责其返回广州的旅费。

  Repatriate 较 send back 正式。

- This Contract shall be governed by and construed in accordance with the laws of China. 本合同受中国法律管辖,并依中国法律解释。

  Construe 较 explain, interpret 正式。in accordance with 较 according to 正式。

- The Employer may object to and require the Contractor to replace forthwith any of its authorized representatives who is incompetent. 雇主认为承包人委派的授权代表不合格时,可以反对并要求立即撤换。

  Require 较 ask 正式;而且,require 表示上对下的要求,ask 没有这么明确,它含有 request 和 require 之意,其中 request 表示下对上的要求,即"请求"。公文体 forthwith 较 at once 正式。

- The Chairperson may convene and preside an interim meeting based on a proposal made by one-third of the total number of directors. 董事长可以根据董事会超过 1/3 董事的提议而召集主持临时董事会议。

  Convene 较 hold 正式,preside 较 be in charge of 正式,interim 也是正式用词,较 temporary 正式。

- In processing transactions, the manufacturers shall never have title either to the materials or the finished products. 加工贸易中,厂方无论是对原料还是成品都无所有权。

  Title 较 ownership 正式。

- The term "Effective date" means the date on which this Agreement is duly executed by the parties hereto. "生效日期"指双方签约之日。

  Execute 较 sign 正式。

- The submission to and consent by the Engineer of such programs or the provision of such general descriptions or cash flow estimates shall not relieve the Contractor of any of his duties or responsibilities under the Contract. 向工程师提交并同意的上述进度计划或提供上述一般说明或现金流量估算,并不解除合同规定的承包人的任何义务或责任。

  Consent 和 estimate 都是正式用词。

- The Appendix hereto shall, through the contract period, be deemed to be construed as an integral part of this Contract. 整个合同期间,本合同附件应解释为合同不可分割的一部分。

Deem 较 consider 正式。

- The parties shall work together in order to endeavour to achieve the timely completion of the Project in accordance with the Project Schedule as Annex 4 according to which the construction period shall be ________ years from the commencement date. 双方共同努力确保按附件四的工程进度表及时竣工,根据该工程进度表工期应从开工日起________年。
  Commencement 较 starting、beginning 正式。

3. 同、近义词,相关词并列(Parallel Synonyms, Parasynonyms and Associated/Binomial Expressions)

在英文合同中同、近义词或相关词成对或多个并列连用,使合同周密严谨,以减少漏洞和争议。

- This agreement is made and entered into by and between Party A and Party B. 本协议由甲方与乙方签订。
  句中 made 与 entered into 同义,而 by 与 between 相关。
- Party A agrees to purchase from Party B the following commodity under the terms and conditions set out below. 甲方同意按照下列条款向乙方购买如下商品。
  Terms 和 conditions 同义,往往并列连用表示合同的条款。
- Party A shall be unauthorized to accept any order sort to collect any account on and after September 20. 自9月20日起,甲方已无权接受任何订单或收据。
  On 与 after 相关词连用,用以明确时间。
- Any partner or his/her agent, may review any and all accounting or other records at anytime. 任何合伙人或其代理人,可随时审查任一或全部会计账目或其他记录。
  Any 与 all 相关词连用,表达更为严谨。
- The decision by such arbitration shall be accepted as final and binding upon both parties。该仲裁裁决为终局裁决,双方均受其约束。
  Final 和 binding 属相关词连用。
- The Company hereby releases and discharges Party A from further performance of, and any duties, obligations or liabilities under the amended Agreement. 本公司特此解除甲方已修正协议的进一步履行及其修正协议下的义务和责任。
  Release 和 discharge 相关词连用, duty, obligation 和 liability 属近同义词

连用。

- If the Contractor shall duly perform and observe all the terms, provisions, conditions and stipulations of the said Contract, this obligation shall be null or void but otherwise shall be and remain in full force and effect. 如果承包人切实履行并遵守上述合同的所有条款、条件及规定,此义务即告终止,否则将保持完全有效。

  句中 terms, provisions, conditions, stipulations 为一组同义词,意为合同的条款及规定,null 和 void, be 和 remain, force 和 effect 也都是同义连用。

- While this agreement is in effect, the Author shall not, without the prior written consent of the Publisher, write, edit, print, or publish, or cause to be written, edited, printed or published, any other edition of the Work, whether revised, supplemented, corrected, enlarged, abridged, or otherwise。本协议有效期间,未经出版方事先书面同意,著作权人不得写作、编辑、印刷或出版,或促成他人写作、编辑、印刷或出版作品的其他版本,无论修订、增补、修正、扩充、节选或以其他方式。

  句中 write, edit, print, or publish 属近义词连用。

- May be fixed or varied from time to time at and in accordance with the sole discretion and opinion of the Seller ... 可按卖方自行的判断和意见不时确定或更改……

  句中的 discretion and opinion 属于近义词连用。

4. -or/ -er 和-ee 名词的成对使用

在英文合同中,经常会见到成对使用的这类名词,表示动作的支配者和受支配者,如 employer-emloyee(雇主—雇员), assignor-assignee(转让方—受让方), lessor-lessee(出租人—承租人), licensor-licensee(许可方—被许可方), payer-payee(付款人—收款人), offeror-offeree(要约方—受约方), promisor-promisee(要约人—受约人),等等。

5. 大写字母的运用(Capitalization)

英文合同中,有些词的首字母需要大写。需要大写首字母的词除了基础英语中用在句首的一般情形外,尤其应注意下列几种情况:

- 当事人

  当事人指合同双方或各方(一般为两方以上)时,首字母通常大写。例如:
  Party B shall inspect the raw materials supplied by Party A forthwith upon

receipt thereof.
乙方应一经收到甲方提供的原材料,即行检验。

- 机构名称

英文合同中涉及的机构名称,首字母要大写。例如:
China International Economic and Trade Arbitration Commission (简称 CIETAC)(中国国际经济贸易仲裁委员会)
International Institute for the Unification of Private Law (简称 UNIDROIT)(国际统一私法协会)
The Board of Directors (董事会)

- 合同涉及的特指名称

在英文合同中,一些涉及的关键词语,一般首字母要大写。通常会在合同的定义条款中定义,然后再重复使用。例如:
The Acceptance Test Manual shall be the document prepared by A which will be used by A and the Purchaser FOR checking that the Equipment is in accordance with the specification and Approved Data. 本验收实验手册系指由A提供的,供A与买方检验设备是否符合技术规格和认可资料的文件。
句中的 Acceptance Test Manual , Equipment, Approved Data 均有特指含义。

- 本合同及合同具体条款及附件名称

Such Site Acceptance shall take place within a period of two weeks after the Effective Date to the Contract as such period may be extended pursuant to Article 6 hereof. 现场验收应在本合同生效日后2周内进行,此项验收的时间按本合同第6条延长。
Party A and Party B shall make full endeavors to fulfill this Contract with the stipulated period. The schedule of various activities is attached at Appendix 4. 甲乙双方应竭尽全力在规定的期间内完成本合同,各活动的日程表见附件4。

- 国际公约、惯例和国家法律法规、条例规章等的名称

例如:This Contract is signed on a mutuality voluntary basis by and between the following Employer and Employee in accordance with "The Labour Law of The People's Republic of China". 本合同在自愿的基础上由聘用方和受聘方根据《中华人民共和国劳动法》达成协议如下。
合同提及的国际公约、惯例的首字母也需大写,如:
International Chamber of Commerce Term 2000,也称 *International Rules for the Interpretation of Trade Terms* 2000(简称 *INCOTERMS* 2000)《2000年

国际贸易术语解释通则》

United Nations Convention on Contracts for the International Sale of Goods（简称 *CISG*）《联合国国际货物买卖合同公约》

The Uniform Customs and Practice for Documentary Credits, 1993 *Revision ICC Publication No.* 500《跟单统一信用证统一惯例》(1993 年修订本，国际商会第 500 号出版物)

The Uniform Law on International Sale of Goods《国际货物买卖统一法》

The Uniform Law on the Formation OF Contracts for the International Sale of Goods《国际货物买卖合同成立统一法》

The Principles of International Commercial Contracts《国际商事合同通则》

- 合同中的货币名称

  Party A shall pay Party B a monthly salary of US $600 (SAY FIVE HUNDRED US DOLLARS ONLY). 聘方须每月付给受聘方美元 600 元整。SAY 表示后接大写，ONLY 表示“整”。

此外，英文合同为强调某些部分而用大写字母书写，以资醒目。

例如在英文合同的开头往往有这样的句子：This AGREEMENT ... WITNESSES that WHEREAS ... and WHEREAS ... NOW THEREFORE, in consideration of it is hereby agreed as follows:...

6. 古体词与外来词（Archaic Words and Loan Words）

英文合同中迄今仍然使用一些古体词语，最突出的形式是把 here, there, where 加上介词而构成的复合副词。如：hereby, hereto, hereunto, herein, hereinafter, hereinbefore, hereunder, thereof, thereto, whereby, whereas, 等等。Here + 介词一类往往可以套用介词 + this agreement 来帮助理解。There/where + 介词就需要考虑上下文参照 here + 介词的理解方法。具体的理解和运用将在第三章中英文合同常用词一节详述。

基于民法法系对普通法系的影响，英文合同的外来词主要是法语和拉丁语，有些外来词已经同化为英语，成为英语词汇的一部分，还有一些保留下来，现在仍在使用。连 Contract 这个词都是从拉丁语 contractus 演化而来的。英文合同中常见的不可抗力条款用的 Force Majeure 也是拉丁语。具体例子如下：

- The arbitration shall take place in the Plaintiff's or Defendant's country. 仲裁应在原告或被告的国家进行。

  Plaintiff 和 defendant 原为法语，现在已同化为英语。

- What we said regarding the first contract applies mutatis mutandis to all later ones. 我们就第一个合同的意见经必要修正适用于所有的后续合同。
  Mutatis mutandis 为拉丁语,意为已作必要的修正。
- An allowance on the basis of 2% of the sales price for each unit shall be calculated and deducted from the purchase price fraction pro rata. 补贴应按每单位售价的2%计算并从购价中按比例扣除。
  Pro rata 为拉丁语,意为按比例"in proportion", according to a factor that can be calculated exactly.
- We appoint and empower Mr./Ms. ________ to be our agent ad litem in the first and second instances and/or retrial respectively, as well as in the enforcement procedures, with respect to the case of ________ vs. ________. 我方委托授权某先生/女士为某案一审、二审、再审和执行程序的委托代理人。
  Ad litem 为拉丁语,意为"for the suit". Agent ad litem 意为诉讼代理人。

7. 助动词的准确使用(Auxiliaries)

英文合同中,shall 并非单纯表示将来时,而常用来表示法律上可强制执行的义务,具有约束力,"应"、"应该"、"必须";其否定形式 shall not 则禁止某种行为,一般宜译为"不得"。will 无论语气还是强制力都要比 shall 弱,宜译为"将"、"原"、"要";should 通常只用来表示语气较强的假设,比如"万一"。多用"shall"代替"will"或"should"加强语气和强制力。

- This Contract shall become effective upon and from the date on which it is signed. 本合同签字生效。
- This Contract shall be written in English in four copies. Each party shall keep two copies. 本合同应以英文写成,一式四份,双方各持两份。
- Investment contributed by the parties is Renminbi ________, which will be the registered capital of the joint venture company. 各方认缴投资总额为人民币________元,将作为合资公司注册资本。

May 则时常用来表达当事人拥有的选择性权利。如 During the Option Period, the Purchaser may terminate this Agreement with a written notice to the Seller. 选择期间,买方可书面通知卖方终止本协议。但其否定形式 may not 另看下例:

- The parties hereto shall, first of all, settle any dispute arising from or in connection with the contract by friendly negotiations. Should such negotiations fail, such dispute may be referred to the People's Court having jurisdiction on

such dispute for settlement in the absence of any arbitration clause in the disputed contract or in default of agreement reached after such dispute occurs. 首先,合同双方应通过友好协商解决合同产生与合同有关的争议。如协商不成,所争议合同缺少仲裁条款或争议后未达成仲裁协议,则该争议可提交到有管辖权的人民法院诉讼解决。

本句中 shall,should 和 may 的表达准确,符合人们通过"协商—仲裁—诉讼"解决争议的基本流程。Shall 表示义务性约定,should 表示虚拟条件,may 表示行使选择性权利。

第三节 句式结构特点(Sentence Structure)

一、句子冗长,结构严谨,语序复杂(prolixity, preciseness and perplexity)

英文合同为了准确、严密、清楚地表达,多以庞杂的从句和/或短语并列,语序复杂多变的长句面目出现,很少以简单句为主。

1. 主句的状语,一般放在助动词后,行为动词前,与基础英语频度副词 often, sometimes, always, never, seldom 的位置相同。例如:

- The Company shall, at all time during the term of the Joint Venture, effect and maintain full and adequate insurance against loss or damage by fire and such risks as are customarily issued in connection with the operation of the Company. 合资公司应在合资期间的任何时候,就火灾以及此类与公司经营相关的其他风险所造成的损失或损害进行投保,并保持充分和适当的保险。
- If, at any time during the execution of the Work, the Engineer requires the Contractor to make bore-holes or to carry out exploratory excavation, such requirement shall in accordance with Clause 51, be the subject of an instruction unless an item or a Provisional Sum in respect of such work is included in the Bill of Quantities. 在工程施工过程中的任何时间内,如果工程师要求承包人钻孔或进行勘探性开挖,则根据第 51 条规定以指示形式下达这一要求,但工程量报价表中已经包括了涉及此类工作的项号或暂定金额者除外。

2. 从句复杂,从句的状语,往往放在连词之后,从句的句子之前。例如:

- If, at any time during the execution of the Contract, either of the Parties to the contract is prevented from executing the Contract in case of Force Majeure such

as war, serious fires, flood, typhoon and earthquake, etc., the time for execution of the Contract shall be extended for a period equal to the affect of those causes. 在合同期间的任何时候,合同任一方,由于受到战争、严重火灾、洪水、台风和地震等不可抗力事件的影响而不能履行合同时,合同履行期应予延长,延长期限相当于事件影响的时间。

- If, at the time and in the place agreed under Sub-Clause 37.3, the materials or plant are not ready for inspecting or testing or if, as a result of the inspection or testing referred to in this Clause, the Engineer determines that the materials or plant are defective or otherwise not in accordance with the Contract, the Engineer may reject the materials or the plant and shall notify the Contract thereof immediately. 如果在按第 37.3 条约定的时间和地点,供检查和检验的材料或工程设备未准备好,或者按本条规定所作的检查或检验结果,工程师认为材料或工程设备有缺陷或是不符合合同规定的,则工程师可拒收这些材料或工程设备,并应立即通知承包人。(本句较为复杂,有两个条件从句,一个宾语从句。)

3. 主从复合句,从句经常用简略形式。例如:

- A party dissatisfied with the judgment may, within 15 days upon receipt of the judgment, file an appeal to the next upper People's Court. 如不服本判决,该方可于接到判决之日起 15 日内向上一级法院提起上诉。
- The Contractor shall, unless otherwise provided in the Contract, make his own arrangement for the engagement of all staff and labour, local or other, and for their payment, housing, feeding and transport. 除合同另有规定外,承包人应自行安排从当地或其他地方雇用的所有职员和劳务人员,以及他们的报酬、住房、膳食和交通。

二、否定前置与倒装(Negative Fronting and Anastrophe)

英语中处理否定的方式一般有两种:一是否定词放在情态动词或助动词后,行为动词前,构成正常的陈述语序;二是否定词放在句首,然后情态动词或助动词与主语位置调换,构成倒装语序。英文合同中含否定意义的句子往往采用后者。

1. 否定仅前置:(Fronting)

- Nothing in Article 12.3 shall prevent Party A or any of its affiliation from

continuing to carry on any of their present businesses. 合同第 12 条第 3 款规定不得妨碍甲方或其分支机构持续经营现有业务。

- Neither party, without prior consent of the other, may assign or transfer to any third party any equity interests held by its side. 未经对方同意,任一方不得向任何第三人转让其持有的股权。

2. 否定倒装:(Anastrophe)

- In no event shall the Seller be liable for lost profits, delay, injury to goodwill or any special or consequential damages howsoever any of the same are caused. 对于利润损失、延误、商誉损害或任何特别或间接的损害赔偿,不论任何原因引起的,卖方概不承担责任。
- In this case, Party B shall refund to Party A the amount which Party A has paid to Party B plus the related interest at the rate of 10% per year immediately, but in no case shall such refunding by Party B exceeds 30 days from receipt from Party A of the notice to terminate the contract. 在此种情况下,乙方应立即返还甲方已支付给乙方的款项并按年利率 10% 加算利息,但不论怎样,乙方该返还不得超过收到甲方终止合同通知后 30 日。

三、被动语态(Passive Voice)

和基础英语一样,英文合同中如果不必知道行为主体、不知道行为主体、想强调行为结果时,就会使用被动语态。被动结构往往作为后置定语、状语或者句子的谓语。例如:

- Failure to notify Party A shall be deemed to be a material breach of this Agreement. 未能按上述要求通知甲方的,则视为构成实质违约。(作谓语)
- Seller agrees to sell and the Buyer agrees to buy the undermentioned goods subject to terms and conditions set forth hereinafter as follows. 按如下列明的条款,卖方同意出售,买方同意购买下述商品。(作后置定语)
- Therefore, Executive agrees that the Company shall be entitled to an injunction restraining Executive from any actual or threatened breach of paragraphs 7, 8 or 9 or to any other appropriate equitable remedy without any bond or other security being required. 因此,董事同意本公司无须提供任何保证或其他担保,有权发出申请禁令限制董事任何实际或危及违反 7、8 或 9 节的行为,或获得任何其他适当衡平救济。(作状语)
- The payment of all the expenses under this contract shall be made by M/T

through Bank of China, Shenzhen Branch and the bank designated by Party B. 所有合同项下的费用均应通过中国银行深圳分行和乙方指定银行进行支付。(作谓语和后置定语)

- Upon termination or dissolution of the Partnership, the partnership will be promptly liquidated, with all debts being paid first, prior to any distribution of the remaining funds. 合伙企业一经终止或解散,合伙企业立即清算,在分割剩余财产前,首先偿还所有债务。(作谓语和状语)

四、Such. . . as 的用法

英文合同力求严密、准确,为避免误解和歧义,常用 such. . . as 作关系代词,引导从句,把所修饰的词或短语放在 such 和 as 之间来明确含义。例如:

- The Engineer shall have authority to issue to the Contractor, from time to time, such supplementary Drawings and instructions as shall be necessary for the purpose of the proper and adequate execution and completion of the Works and the remedying of any defects therein. 工程师有权随时向承包人发出合理和恰当施工、竣工及修补工程缺陷所必需的补充图纸和指令。
- B shall provide such information and data as useful and necessary for the negotiation and appoint a person to cooperate with the representatives from C or New Company and the People's Insurance Company of China in charge of the negotiation. 乙方应向丙方或新公司和主管该谈判的中国人民保险公司提供谈判所需的有用资讯材料,并指定人员与上述各方进行配合。
- The Employee shall also comply with such future Employer policies, rules, regulations, performance standards and manuals as may be published or amended from time to time. 受聘员工也应遵守可随时公布或修改的聘用方今后的政策、守则、规定、行为规范和员工手册。
- The Contractor shall provide the following personnel on the Site for the purpose of the execution and completion of the Works and remedying of any defects: Only such technical assistants as are skilled and experienced in their respective callings (fields) and such formen and leading hands as are competent to give proper superintendence of the Works. 承包人应为施工、竣工或修补工程缺陷向现场(工地)提供:在本行业中技术熟练、经验丰富的技术助理和能对工程给予正确监督的监工和领班。
- All material, Plant and Workmanship shall, from time to time, be subject to such tests and inspections as the Engineer may require at the place of

manufacture, fabrication or preparation, or on the Site, or at such other place or places as may be specified in the Contract, or at all or any of such places. 一切材料、工程设备和工艺应随时按工程师可能提出的要求,在制造、装配或准备地点,或在现场,或在合同规定的其他地点或若干地点,或在所有此类地点或其中任何地点进行检验。

第四节　时态特点(Tense)

1. 由于合同具有预见性,其约定是希望未来发生、可能发生、应避免发生的事宜,所以英文合同中的时态多为一般将来时或一般现在时(从句中多见)。而且往往以"应当做"(shall do)、"可以做"(may do)、"必须做"(must do)、"不得做"(may not/shall not)等表达形式出现来说明当事人的权利、义务。参看第二章第二节,在此不再赘述。也有基础英语常见的 will、will not、to do 及 do(用于强调语气)的表达形式。绝少看到其他时态和表达方式。

例一:In case Party B becomes delinquent in the payment of any sum due hereunder, Party A will be entitled to suspend the performance until such delinquent is corrected, and initiate termination for cause in accordance with Section 10.2. 乙方违约未按本协议规定按期支付的,甲方有权中止履行协议,直至该违约得以纠正,甲方还有权于协议第 10 条第 2 款规定的事由出现时终止本协议的执行。

In case 从句和 until 从句中一般现在时,主句用 will do 表一般将来时。

例二:Licensee agrees that it will not during the term of this agreement, or thereafter, attack the title or any rights of Licensor in and to the Name or attack the validity of this license. 受许可方同意在本协议期间及其后不以或对许可方名义侵害许可方的所有权或任何权利或侵害该许可的效力。

主句一般现在时,从句用 will not 表一般将来时的否定。

例三:The abovementioned loss to be calculated from the 16th day after expiry of the free storage time at the port should be borne by the Buyer with the exception of Force Majeure. 上述损失从到港卸货仓储期届满后第 16 天起算,由买方承担,不可抗力除外。

to be calculated,将来可能需要计算的。

例四:In consideration of employment with the Company, I do hereby acknowledge the facts set out below and agree to be bound as follows. 考虑到受聘于公司,本人由此认可以下列明事实并同意受其约束。

do 强调郑重的语气,可不翻译出。

2. 当然,在特定的情况下,偶尔也会看到完成时态、进行时态的表达。

例如:From time to time after Licensee has commenced selling the articles and upon Licensor's written request, Licensee shall furnish without cost to Licensor not more than additional random samples of each article being manufactured and sold by Licensee hereunder, together with any cartons, containers and packing and wrapping material used in connection therewith. 受许可方开始销售产品后,应许可方随时书面要求,不对许可方产生任何附加费用,受许可方应向许可方提供根据本协议正在生产销售的随机样品及其相关的纸箱、集装箱和包装材料。

3. 偶见不同时态的连用,如保密条款中保密除外的情形。... except to the extent the Receiving Party can demonstrate that the information:

(a) was in the Receiving Party's possession at the time of disclosure by the Disclosing Party and the Receiving Party is not under a prior binder of confidentiality; or

在披露方披露时已为收受方持有的且收受方并不受先前的保密契约约束的资料;或

(b) was or subsequently becomes generally available to the public through no fault or breach of this Agreement by the Receiving Party; or

非因收受方违反本协议以前或后来从公众领域获得的资料;或

(c) was received by the Receiving Party from a third party who has the right to transfer or disclose it; or

收受方从有权转让或披露资料的第三方收受的该资料;或

(d) is independently developed by the Receiving Party.

由收受方独立开发的资料。

其中,(b)款中过去时和现在时连用,表达严谨。

第三章　英文合同中常见的用词及句型 Usual Wordings and Sentence Patterns

I don't care what their intention was.
I only want to know what the words mean.
A word is not a crystal,
transparent and unchanged,
it is the skin of a living thought and may vary greatly
in color and content according to the circumstances and
the time in which it is used.

(*Holmes*, *J.*)

我并不在意他们的意图为何，
我只是想知道文字的意思。
文字不是水晶般透明，一成不变，
而是鲜活思想的外衣，
基于使用的场合和时间
会呈现出迥然不同的色彩和内容。

(霍姆斯法官)

英文合同中常见的用词和句型有其相对固定的含义和用法,不仅可以帮助准确理解掌握合同条款的含义,而且这些成熟的表达方式可以为提高、完善草拟和翻译合同所借鉴,达到事半功倍的效果。

第一节 合同常用词(Usual Wordings)

当大量接触英文合同,就会发现英文合同中有些词或短语出现的频率非常高,往往影响或决定了对合同的准确理解,下面就分门别类地从常见实词和常见虚词两个方面进行具体介绍:

一、英文合同常用虚词(Usual Function Words)

1. Here/there/where + 介词构成的古体词

基本规则:here 代表 this, there 代表 that, where 代表 which 或 what 即 here/there/where + 介词 = 介词 + this/that/which or what

- Hereby: by means of; by reason of this。特此,由此,兹等意。
  例句:The Buyer hereby orders from the Seller the undermentioned goods subject to the following conditions. 买方向卖方订购下列商品,条件如下。
- Herein: in this。此中,于此。
  例句:The minimum royalty herein specified shall be paid by Party B to Party A. 在此规定的最低特许权使用费应由乙方付给甲方。
- Hereinafter: later in the same Contract。以下,在下文。通常与 to be referred to as, referred as, called 连用。
  例句:This Agreement is made and concluded on ________, (date) ________ (year), by and between ________ (hereinafter called Party A) on the one hand and ________ (hereinafter called Party B) on the other hand. 本协议书于________年____月____日由________(以下简称甲方)为一方,与________(以下简称乙方)为另一方签订。
- Hereof: of this。关于此点,在本文件中。Hereunder: under this。本文件规定。
  例句:Both parties agree to attempt to resolve all disputes between the parties with respect to the application or interpretation of any term hereof of transaction hereunder, through amicable negotiation. 合同双方就本合同规定交易任一条

款的适用和解释所产生的所有争议同意力求通过友好协商予以解决。

- Hereto:to this。本文件的。Thereof:of that。它的,其。Thereto:to that。与之,向那里。

  例句:"Licensed Products" means the devices and products described in Schedule 1 annexed hereto together with all improvement and modification thereof or development with respect thereto. "特许产品"系指在本协议附件1中所述的装置和产品,及其全部改进和修改的产品和与之相关的产品。

- Herewith:with this。与此,附此。Thereby:by that means。因此,由此,从而

  例句:In any one or more of the provisions contained in this Contract or any document executed in connection herewith shall be invalid of unenforceable in any respect under any applicable law, the validity and enforceability of the remaining provisions contained herein shall not in any way be affected thereby. 如果根据现行法律,本合同及与此有关文件中有一项或多项条款被视为无效或不能履行,本合同其余条款的效力和履行将不因此受影响。

- Thereafter: after that,afterwards。此后。

  例句:The Contract for the contractual joint venture shall continue from a period of two years thereafter. 本合作经营企业合同,此后应持续有效两年。

- Therein: in that; in that particular context; in that respect。在那里;在那点上;在那方面。

  例句:The Leased Premises are deemed to be fit for occupation when the building therein is substantially completed. 当在那里的建筑物实质完成时,该租赁房屋才认为适合占有居住。

- Therewith:with that。以此;此外。

  例句:The Employer shall indemnify and save harmless the Contractor against and from the same and against and from all claims, proceedings, damages, costs, charges and expenses whatsoever arising there out or in connection therewith. 业主应赔偿所有索赔、诉讼、损害赔偿、支出、花费、费用,不论因本合同产生或与其相关,并保证承包人免于承担上述责任。

- Whereby: by the agreement; by the following terms and conditions, etc.。凭此协议,凭此条款等。

  例句:This Agreement is made and concluded by and between AA Corporation (hereinafter referred to as Party A) and BB Company (hereinafter referred to as Party B) whereby the Parties hereto agree to enter into the compensation trade under the terms and conditions set forth below。本协议由AA公司(以

下简称甲方）和BB公司（以下简称乙方）签订。双方同意按下列条款进行补偿贸易。

2. WITNESSETH, Whereas, Now Therefore, NOW THESE PRESENTS WITNESS, Know All Men by these presents, In witness Whereof, In Testimony Whereof, Undersigned

WITNESSETH, Whereas, Now Therefore 用于英文合同前言部分，In witness Whereof 用于合同结尾证明部分，在第二章篇章结构特点中已有涉及，恕不赘述。

- In Testimony Whereof, in Witness Whereof。以此为证，特立此证。

  例句：In Testimony Whereof we have hereto signed this Document on ________(date) accepted on ________(date). 我方于________年____月____日签署本文件，并于________年____月____日接受该文件，特此为证。

- NOW THESE PRESENTS WITNESS：兹特立约为据，本句话也是用于WHEREAS条款之后引出具体协议事项。

  例句：NOW THESE PRESENTS WITNESS that it is hereby agreed between the parties hereto as follows... 兹特立约为据，并由订约双方协议如下……

- KNOW ALL MEN by these presents：根据本文件，特此宣布。（通常用于前言部分）

  例句：KNOW ALL MEN by these presents that we ________(bank's name) having our registered office at ________ (hereinafter called "the Bank") will be bound unto ________(the Owner's name)(hereinafter called "the Owner") in the sum of ________ for payment well and truly to be made to the said Owner, the Bank will bind itself, its successors and better assignee by these presents. 根据本文件，兹宣布，我行，（银行名称），其注册地点在（以下简称本银行）向（业主名称）（以下简称本业主）立约担保支付（金额数）的保证金。本保证书对本银行及其继受人和受让人均具有约束力。

- Undersigned：法律文件末尾的签名者，前面加定冠词the，是指文件签署者的自称。

  例句：The undersigned Seller and Buyer have agreed to close the following transaction in accordance with the terms and conditions stipulated as follows... 兹经签约的买卖双方同意，按下列条款，达成这笔交易……

3. Notwithstanding: in spite of, despite。即使,尽管

例一:Notwithstanding any other provisions to the contrary herein, insurance coverage and limits shall be subject to approval of all the parties. 即使有与本合同相悖的规定,保险范围和责任限制应以合同各方同意为准。

例二: Notwithstanding Article 2. 2, the parties may agree to extend the Expiration date to such date as is reasonable in the circumstances if any of the conditions precedent referred to in Article 2. 1 is not satisfied or waived on or before the Expiration Date, any such agreement or waiver to be in writing. 尽管有本合同第2条第1款规定,如上述第2条第1款规定的先决条件在合同期满日之前既未实现又未放弃,合同各方亦可根据具体情况,约定合理延长合同的期满日。

4. As

合同英语中 as 出现的频率极高,而且用法灵活多变,是典型的"自由人"。在某种意义上讲,从使用 as 的熟练程度可以衡量合同英语的造诣。具体用法和含义见以下实例:

- As 放在代表"规定"的 provide, stipulate, set forth, prescribe 等词的过去分词前,含义为"依照某某规定"。

例一:For purpose of this, Capital Account shall be adjusted hypothetically as provided for in Section 4. 6 herein. 基于此,应依照本合同第四条第六款调整资金账户。

例二:based on their respective Venture interests as set forth in Section 5. 2 hereof. 基于本合同第5条第2款规定的各方在合资公司中的权益。

- 另有 Except as otherwise provided 结构,表示"除非本文/某条款另有规定"。
  例句:Except as otherwise provided herein, all notices or demands sent by registered airmail shall be deemed received 8 days after they have been sent and notices or demands sent by telex shall be deemed received at the time of the dispatch thereof. 除非本合同另有规定,所有通知和请求以航空挂号信寄出则发出后8日应视为送达收悉,以电传方式发出则在发送时视为收悉。
- As 构成 as the case may be(视具体情况而定), as the case may require(视具体要求而定)和 as the venturers may determine 等短语。
  例句:The venture may relocate its office from time to time or have additional offices as the venturers may determine. 该合资公司视投资者决策,可随时迁址或增添营业场所。

- As 构成 as of the date of ________(date) 短语是英语合同中表示"自某年某月某日起"最正式的表达。
  例句:In witness whereof, the parties have caused this instrument to be duly executed as of the day and year first above written. 合同双方签订本文件,该文件自以上书就日期即时生效,特此为证。
- As 还用在 as soon as practical 短语中,意义用法相当于 as soon as possible。
  例句: During the Employment Period, the Company agrees that it shall recommend to the Board the election of the Employee as a Director of the Company on the Commencement Date or as soon as practical thereafter. 本公司同意在聘用期间,应自本协议开始或其后尽早的时间向董事会推选受聘方为本公司董事。
  As 与 such 连用是英文合同中一大特色,参看本书第二章第三节部分,在此不再赘述。

5. Foregoing, aforesaid, the said, aforementioned, above-mentioned, in question

- Foregoing, aforesaid, the said, aforementioned, above-mentioned 这一组,一般放在名词前做限定,意为"前述的"或"上述的",为避免重复已经提到的姓名或名称。

例一:The Bank shall give prompt written or telex notice to the Borrower of the Interest Rate in effect from time to time in accordance with the foregoing sentence. 本银行将根据前述的句子以书面或电传形式随时及时通知借款方生效的利率。

例二:The contract shall be written in Chinese and in ________. Both language versions are equally authentic. In the event of any discrepancy between the two aforementioned versions, the Chinese version shall prevail. 本合同应以中文和________文书就,具同等法律效力。前述两种文本如有歧异,以中文文本为准。

- In question: under consideration; being talk about。通常表示"在考虑或讨论中的"某件事或某个问题,可译为"这"或"该"问题。
  例句:All prices to be paid by the Buyer under its obligations of the buyback/counter-purchase Contract shall be the world market prices taking into account the other delivery terms for the goods in question. 买方根据返销或回购货物合同的义务所支付的价格应为世界市场价格,结合考虑该货物的其他交货

条件。

6. Follows, as below, the following

这一组都表示"下列",一般放在动词后,而 the following 作为"下列"在英文合同中用的较少。这样的例子俯拾皆是,恐怕每个英文合同都少不了的。

NOW THEREFORE, the parties hereby covenant and agree as follows...

为此,双方达成契约,约定如下:

NOW THEREFORE, it is hereby agreed as below...

为此,双方约定如下……

例句: Now therefore, in consideration of the premises and covenants described hereinafter, Party A and Party B agree as follows... 兹以上述各点和契约所载条款为约因,订约双方协议如下……

7. According to, under, subject to, in accordance with, as per, as provided in, pursuant to, in compliance with

• 这一组都表示"依照,根据"合同的约定或者法律的规定。其中尤以"according to"最不正式,自然用的最少了,而"in accordance with"最为常见。

例一:In case no settlement can be reached, the case may then be submitted for arbitration to China International Economic And Trade Arbitration Commission in accordance with the provisional Rules of Procedures promulgated by the said Arbitration Commission. 如未能达成和解,该案件可提交中国国际贸易仲裁委员会根据该仲裁委员会颁布的仲裁程式暂行规定进行仲裁。

例二:A Photostat copy of the Acceptance Certificate of the Contract Plant signed by the representatives of both parties as per Chapter 9 of the present Contract. 该合同设备的验收证书的影印副本由双方代表按照该合同第九章签收。

例三:Both Parties shall each contribute their paid in capital in compliance with the items specified in the appendix to the Contract. 合同双方应按照本合同附件中载明的专案进行出资。

• Subject to 与 in accordance with 连用:

例如:Subject to and in accordance with article 21 of the company's articles of association, Mr. Tony Millar will be removed from the office of director. 依照并根据公司章程第 2 条,免除 Tony Millar 的董事职务。

8. Including but not limited to 与 including, without limitation 以及 including by way of illustration but not limitation

英文合同表达“包括但不限于”时,就会用到这几个短语。

例如:The time for the performance of the Seller's obligations set forth in this Contract shall be automatically extended for a period equal to the duration of any nonperformance arising directly or indirectly from Force Majeure events including but not limited to fire, flood, earthquake, typhoon, natural catastrophe, and all other contingencies and circumstances whatsoever beyond the Seller's reasonable control preventing, hindering or interfering with the performance thereof. 本合同规定卖方履行义务的时间应自动延长等同于由直接或间接由于不可抗力事件导致的不能履行的期间。不可抗力事件包括但不限于火灾、洪水、地震、台风、自然灾害和卖方无论怎样也无法合理控制的阻止、妨碍、干扰本合同履行的其他风险和情形。

9. Prior to, no later than, on or before, on and after

Prior to, on or before, no later than, on or after 常用在英文合同中限定日期,prior to 表示“某日之前,提前多少日”;on or before, no(not) later than,表示“不迟于”;on and after 表示“从某日起”。

例如:Party A shall be unauthorized to accept any order sort to collect any account on and after September 20. 自9月20日起,甲方已无权接受任何订单或收据。

例一:Our terms are cash within three months, i. e. on or before May 1. 我公司的条件是,3个月内,即不得晚于5月1日,支付现金。

例二: Party B shall ship the goods within one month of the date of signing this Contract, i. e. not later than December 15. 本合同签字之日1个月内,即不迟于12月15日,你方须将货物装船。

例三:10 – 15 days prior to the date of shipment, the Buyer shall inform the Seller by cable or telex of the contract number, name of vessel, ETA of vessel, quantity to be loaded and the name of shipping agent, so as to enable the Seller to contact the shipping agent direct and arrange the shipment of the goods. 装运前10天到15天,买方应以电报或电传方式通知卖方合同编号、装运船名、预计到达时间、装载数量和承运代理商名称,以便能使卖方直接联系承运代理商安排货物装运。

此外,为限定时间更为明确,还常用 inclusive、including 和 included 来限定

含当日在内的时间。

例四：This credit expires till January 1（inclusive）for negotiation in Beijing.（or：This credit expires till and including January 1 for negotiation in Beijing.）本证在北京议付，有效期至1月1日。

如果不包括1月1日在内，则为till and not including January 1。

10. Without prejudice to

Without prejudice to常用于英文合同中，表示在"不损害某规定/情况下"。

例如：The Buyer shall nevertheless have the right to cancel in part or in whole of the contract without prejudice to the Buyer's right to claim compensations.不妨害买方索赔权，买方仍有权取消合同的部分或全部。

11. Attributable to, due to, owing to, by virtue of, in view of, because of, on account of, considering, in consideration of

● 这一组短语出现在英文合同中都表示"因为"，其中due to，owing to，because of较不正式，很少使用。

例一：Should the Buyer be unable to arrange insurance in time owing to the Seller's failure to give the above-mentioned advice of shipment by cable or telex, the Seller shall be held responsible for any and all damages and/or losses attributable to such failure.如果因为卖方未能以电报或电传形式发出上述装运通知，买方不能及时安排保险，则卖方应对此产生的损失和/或损害赔偿承担责任。

例二：Licensee hereby agrees that its every use of such name shall inure to the benefit of Licensor and that Licensee shall not at any time acquire any rights in such name by virtue of any use it may make of such name.被许可方特此同意该名称的使用应有利于许可方利益且不得在任何时候因利用该名称而取得该名称项下任何权利。

例三：Buyer shall have the right to inspect the goods on arrival and, within ________ business days after delivery, buyer must give notice to seller of any claim for damages on account of condition, quality or grade of the goods, and buyer must specify the basis of the claim of buyer in detail.买方应有权在货物运抵及交付后________个营业日内进行检验，买方须通知卖方任何基于货物条件、品质、等级而产生的索赔，并详细说明索赔事由。

例四：In view of the personal nature of the services to be performed under

this Agreement by you, you cannot assign or transfer any of your obligations under this Agreement. 考虑到本协议项下待你方履行的服务有人身性质,你方不能转让本协议项下你方的任何义务。

- In consideration of 以……为约因/对价

约因是英美法系的合同有效成立要件之一,没有则合同不能依法强制履行。但是,大陆法系的合同则无此规定。

例一:Now, Therefore, in consideration of the mutual premises and covenants herein contained, it is hereby agreed... 兹以上述各点和契约所载条款为对价,订约双方协议如下……

例二:In consideration of the payment to be made by Party A to Party B, Party B hereby covenants with Party A to complete the building in conformity with the provisions of the Contract. 乙方特此立约向甲方保证按合同规定完成工程建设,以取得甲方所付的报酬。

12. In lieu of: 一般出现在英文合同中表示"替代"的意思,相当于基础英语中的 in place of, instead of

例句:In circumstance provided above in Clause 14.1, Party C or New Company shall, at its sole option and discretion, be entitled to transfer to Party B all or part of Party C or New Company's proprietary rights and ownership of the infrastructure project, under construction or after Completion Date, as liquidated damages, in lieu of computing and compensating the actual damages provided that such transfer shall be conducted of Party C's own free will or rendered in the arbitration award as stipulated in clause 23.

在上述第 14 条第 1 款规定的情形下,丙方或新公司自行选择决断有权向乙方转让丙方或新公司的所有权及在建或竣工后基础设施的所有权的全部或部分作为约定的固定数额的违约金来替代计算赔偿实际损害,但该转让应为丙方自己自愿实施的行为或根据第 23 条的规定基于仲裁裁决的处分。

13. In respect of; in respect thereof; with respect to; as regards 涉及,至于,在……方面

- 英文合同中常用 in respect of, in respect thereof 或 with respect to, 表示与本合同/协议/条款有关的问题,比 about, concerning, as regards 正式。

例一:Notwithstanding Clause 16.1, Party B shall not be entitled to claim for

itself in respect of any Force Majeure in Clause 16.1.

不管第16条第1款的规定,乙方无权根据第16条第1款为其自身提出有关不可抗力的索赔。

例二:Upon the termination of the Existing Letter of Credit and the payment of all amounts (if any) owing in respect thereof, Bank Boston, N. A. shall cease to be an Issuing Bank hereunder.

现有信用证一经期满所有相关应付款项支付(如果有的话)即告终止,北美波士顿银行不再是该信用证项下的开证行。

例三:Party C or New Company shall retain all rights with respect to the specifications, plans, drawings and other documents and Party B undertakes not to disclose the same or divulge any information contained therein to any third country without the prior written consent of Party C or New Company.

丙方或新公司应保留有关说明书、计划书、图纸和其他文件的所有权利且乙方应承诺未经丙方或新公司事先书面同意不披露上述文件或泄露上述文件所包含的任何资讯给第三国。

• 此外,pertaining to; pertaining thereto 也表示"涉及,与……有关"。

例如:Broker is in the business of brokering real estate loans and engages sales representative to perform services pertaining to such business.

经纪人是在房地产贷款经纪业务中聘用销售代表进行有关该业务的服务。

14. SAY, ONLY

英文合同为明确金额的数量,小写金额之后,在括弧内用大写文字重复该金额,在大写文字前加上"SAY",意为"大写";在最后加上"ONLY",意思为"整"。当然,小写与大写的金额数量要一致。

例如: Party A shall pay Party B a monthly salary of US $600 (SAY FIVE HUNDRED US DOLLARS ONLY). 聘方须每月付给受聘方美元600元整。

15. In favor of;in one's favor 表示以……为受益人

例如:One original and one copy of the irrevocable letter of guarantee issued by the Licensor's Bank for a sum of 10% of the total price for the technical know-how in favor of the Licensee. 由许可方银行开具以被许可方为受益人,金额为专有技术总价10%的不可撤销保函正本和副本各一件。

又如:We hereby establish this irrevocable letter of credit in your favor for

account of ABC Company in the amount of US $________(amount in words), available against your draft(s) drawn at sight on Credit Bank, N. A., Letter of Credit Department, Los Angeles, California, accompanied by your signed and dated statement as follows... 我行特此开立在ABC公司账上以贵方为受益人总额为美元________(大写金额),凭交加州洛杉矶北美信贷银行信用证部开出的即期汇票付款,附有贵方签字和具名日期声明如下……

但注意 in favor 有时另有他义。

例如:Our goods that we offer you are much in favor in the European Continent. 我方向你方报盘的货物,在欧洲大陆颇受好评。in favor 此处表示受赏识、受好评。

16. In confirmation of 为确定……起见

例如:In confirmation of such subordination, Tenant shall from time to time execute promptly any certificate that Owner may request.

为确认该从属关系起见,承租人应随时及时签署任何业主可能要求的证书。

17. Whatsoever, wheresoever and howsoever

例一:This limitation shall apply in any situation whatsoever, wheresoever and howsoever arising.

此限制适用于无论何处,无论如何和无论为何的情形。

例二:However, AGENT shall not enter into any commitment whatsoever on behalf of ××× without its prior authorization in writing.

然而,未经×××事先书面授权,代理商不得以任何形式代表×××签订任何委托协议。

二、英文合同常见实词(Content Words)

1. Represent, warrant, undertake, guarantee

在英文合同中这几个词都表示"保证"的含义。Represent 往往和 warrant 连用,出现在合同的声明保证部分:

例一:Both the Seller and the Purchaser warrant and represent that no broker was involved in negotiating this purchase and sale, and both the Seller and the Purchaser agree to indemnify and hold each other harmless against any and all claims for brokerage.

买卖双方保证并声明没有中介介入交易磋商，且保证赔偿对方因中介引起的索赔并使其免受损害。

例二：Under FOB terms, the Seller shall undertake to load the contracted goods on board the vessel nominated by the Buyer on any date notified by the Buyer, within the time of shipment as stipulated in Clause 8 of this Contract.

根据离岸价格术语，卖方应保证根据在本合同第八条规定的时限内，按买方通知的日期，装运货物至买方指定船只。

例三：Party B guarantees that the machines and equipment are unused, sophisticated and of best quality, and that the machines and equipment are capable of manufacturing the steel wire rope.

乙方保证机器设备未经使用，性能良好、品质卓越而且该设备能生产出钢丝绳。

2. Principal place of business (principal office), domicile, business premise, registered office

在英文合同中，这几个词的意思分别是："主营业地"、"住所地"、"营业场所"、"注册地"，往往出现在前言的"parties"部分。

例一：This Contract made on April 1, 19 ____, at ________, China, between ABC Co. with its principal office at ________, China (hereinafter called Party A), and XYZ Co. with its principal office at ________, USA (hereinafter called Party B).

本合同于19 ____年4月1日于中国________签订，合同双方为ABC公司(以下简称甲方)，其主营业地位于中国________，和XYZ公司(以下简称乙方)，其主营业地为美国________。

例二：If franchisee is declared in default of the agreement, the franchiser has the right to conclude the terms of the agreement and also has the right, without notice to execute any dutiful and authorized acts, on the business premise necessary.

如被特许方承认违约，许可方则有权终止该协议且有权未经通知在必要的营业场所采取任何尽责和授权行为。

例三：EMPLOYMENT AGREEMENT is made and entered into on ________ day of ________ (month), ________ (year), by and between: ________ (hereinafter referred to as the "Company"), a corporation organized and existing under the laws of the State of ________, with its registered office located at

________, and ________ (hereinafter referred to as the "Employee"), an individual, with nationality of ________ (Passport No. ________) residing at ________.

本聘用协议订立于________年____月____日,协议双方为________(以下简称公司),其按________州法律组织设立,注册地为________,和________(以下简称雇员),自然人,国籍为________国,护照号码为__________,住址为________。

例四:The Arbitration shall be conducted in the country of the domicile of the defendant.

本仲裁应在被申请人住所地的国家进行。

3. Chapter, article, section, clause, paragraph, subparagraph

英文合同中的"章"、"条"、"款"、"项" 分别用 chapter, article/section/clause, paragraph, subparagraph 表示。

例如:The Borrower further irrevocably consents to service of process upon it out of said courts in any such action or proceeding by mailing copies thereof by United Stated registered air mail, postage prepaid, to the Borrower at the address specified in Section 10. 5 hereof.

借款人进一步不可撤销同意上述法院就该事宜诉讼或程式的送达,接受按照本合同第 10 条第 5 款指定的借款人地址寄来的美国航空挂号信,邮资已付邮件中的副本。

4. Have the right to do, be entitled to, may do, reserve the right to do, be (duly) authorized to do, have the authority to do, do sth. at one's option or/and discretion, be at liberty to do

这一组短语是都表示"有权做"。Be entitled to 表示 to give sb. the right to sth. 体现该权利法律上的强制性;reserve the right to do 表示 to have a specified power of right in law 体现法律上规定的权利;而 be authorized to do, have the authority to do 指经授权而有的权利;do sth. at one's option or/and discretion 则指行为人自主决定的权利。

例一:The Buyer shall nevertheless have the right to cancel in part or in whole of the contract without prejudice to the Buyer's right to claim compensations.

尽管如此,买方有权撤销合同的全部或部分,概不妨碍买方索赔权之

行使。

例二:In circumstance provided above in Clause 14.1 C or New Company shall, at its sole option and discretion, be entitled to transfer to B all or part of C or New Company's proprietary rights and ownership of the infrastructure project, under construction or after Completion Date, as liquidated damages, in lieu of computing and compensating the actual damages provided that such transfer shall be conducted of C's own free will or rendered in the arbitration award as stipulated in Clause 23.

在上述第14条第1款规定的情形下,丙方或新公司自行选择决断有权向乙方转让丙方或新公司的所有权及在建或竣工后基础设施的所有权的全部或部分作为约定的固定数额的违约金来替代计算赔偿实际损害,但该转让应为丙方自己自愿实施的行为或根据第23条的规定基于仲裁裁决的处分。

例三:The Buyer shall establish the covering letter of credit before the date specified in Clause Three of this Sales Confirmation, failing which the Seller reserves the right to rescind without further notice, or to accept whole or any part of this Sales Confirmation not fulfilled by the Buyer, or to lodge a claim for losses sustained, if any.

买方须于销售确认书第3条所规定的日期之前开出本批交易的信用证。否则,售方有权不经通知取消本确认书,或接受买方对本销售确认书未履行的全部或一部分,或对因此遭受的损失提出索赔。

例四:The supervision personnel appointed by Party A and its representative shall have the authority to supervise the progress of work and give instruction.

甲方任命的监管人员及其代表应有权监督工程进度并发出指令。

5. Perform, fulfill, execute, implement

英文合同表示合同履行时经常用到这几个词,perform 表示 to do what one party is obliged to do by a contract 泛指双方履行合同的各项责任和义务;fulfill 表示 to do everything which is promised in a contract 强调合同一方具体履行合同的义务;execute 和 implement 则强调具体实施,execute 也有签约、生效的用法。

例一:With respect to the outstanding 180 M/T of low-density polyethylene NY2 - 11 under Contract No. 79hp - 106, we insist that you must open the covering letter of credit the soonest possible to secure the performance of the

contract. We hereby would like to call your attention to the fact that the Adviser Inc., who purchased LDPE NY2 – 11 from us at the same time as you did have fulfilled their commitment under the previous Contract not long after we offered our regulated price and signed a new contract covering substantial quality.

有关第 79hp – 106 号合同项下 180 公吨的低密度聚乙烯(NY2 – 11)未付款项,我方坚持要求贵方尽快开立信用证以保证合同的履行。我方在此提请贵方注意该事实,同时从我公司购买低密度聚乙烯(NY2 – 11)的 Adviser 公司已经按先前的合同履行完义务,不久后,我方就提供了调整的价格并签订了一份产品品质优良的新合同。

例二:Each of the parties to this Agreement shall use its reasonable best efforts to effect the transactions contemplated hereby and to fulfill and cause to be fulfilled the conditions to Closing under this Agreement including, without limitation, Parent using reasonable best efforts to obtain the Parent Stockholder Approval at the meeting of Parent's stockholders scheduled to be held on June 25, 1999 or at any adjournment or postponement thereof (the "June 25 Meeting") Each party hereto, at the reasonable request of another party hereto, shall execute and deliver such other instruments and do and perform such other acts and things as may be necessary or desirable for effecting completely the consummation of this Agreement and the transactions contemplated hereby.

合同任一方应竭尽全力来完成在此预期的交易并按本协议履行或促使交易的成交条件的履行。包括但不限于母公司尽力按日程在 1999 年 6 月 25 日召开的母公司股东会或该日期延后或休会期间通过母公司股东批准。本合同一方应在他方合理的要求下,应签署并交付其他文件并切实履行本协议和预期交易完全成就所必需或需要的行为和事宜。

例三:All disputes arising in connection with this contract or in the execution thereof, should be settled amicably through negotiations.

所有与合同或合同履行有关的争议,应通过友好协商解决。

例四:All expenses of keeping the books and records of the Company and the preparation of financial statements required to implement the provisions of this Agreement or otherwise needed for the conduct of the Company's business shall be borne by the Company.

所有履行本协议规定所要求的或其他本公司经营所需要的保存本公司账册记录和准备财务报表的费用由本公司承担。

6. Abide by, observe, obey, comply with

这几个词在英文合同中都表示“遵守,服从”的意思。Comply with 的主语通常是 sth. ,而 observe 和 abide by 的主语则通常是 sb.

例一:The delivered equipment shall be installed and tested by Party B and shall fully comply with the technical requirements and processing quality of the contract.

所交付的设备应由乙方安装调试,应完全符合本合同的技术要求和工艺品质。

例二:The Contractor shall observe and abide by all applicable laws, rules and regulations in connection with the Work.

承包人必须遵守和服从与该工程有关的一切适用法律规章和条例。

7. Have the legal obligation to do, be obliged to, shall do, be under the obligation to do, be liable/responsible to do, be liable/responsible for

在英文合同中这一组短语都表达“有责任、有义务”。Shall do sth. 在第二章英文合同特点时已经述及,在此不再赘述。其他短语的用法,参看下例:

例一:The Company has no legal obligation, absolute or contingent, to any other Person to sell *any material portion* of the assets of the Company, to sell any material portion of the capital stock or other ownership interests of the Company or any of its Subsidiaries, or to effect any merger, consolidation or other reorganization of the Company or any of its Subsidiaries or to enter into any agreement with respect thereto.

本公司没有完全或随附的任何法律义务向任何他人出售公司资产的任何重要部分,出售股本的任何重要部分或本公司或其任一子公司的其他所有权权益,或实现本公司或任一子公司的并购、合并或其他的重组或签订有关以上事项的协议。

例二:RCII is not under any legal obligation, whether written or oral, to do any of the foregoing. RCII 公司没有任何书面或口头上的法律义务来做以上的任何一项。

例三: In the case of dangerous and/or poisonous cargo (es), the Seller is obliged to take care to ensure that the nature and the generally adopted symbol shall be marked conspicuously on each package. 在危险或有毒货物的情况下,卖方有义务照管确保其属性安全且应在每一包装上标注通常采用的标识。

Within the time as notified by the Buyer, after its arrival at the port of shipment the Seller shall be fully liable to the Buyer and responsible for all losses and expenses such as dead freight, demurrage.

在买方通知的时限内,抵达装运港后,卖方应对买方承担全部责任并对诸如空仓费、延滞费等所有损失和费用负责。

The Seller shall not be held liable for failure or delay in delivery of the entire lot or a portion of the goods under this Sales Contract in consequence of any Force Majeure incidents.

卖方对因任何不可抗力事件导致本买卖合同项下整批或部分货物未能交付或延误概不承担责任。

8. Effect

在基础英语中,effect 一般作名词,指效果、影响。英文合同中如:come into effect 表示生效;sth. in effect 表示生效的法律文件。除了这些基本用法外,effect 还常用做动词表示"实现"、"完成"的意思。例如:

This contract shall come into effect on the date when it is signed by both parties.

本合同自双方签字之日起生效。

The Buyer shall accept the bill of exchange immediately upon the first presentation of the bill of exchange and the required documents and shall effect the payment on the maturity date of the bill of exchange.

汇票一经承兑交单,买方应在汇票到期时完成支付。

此外,当表达"实际上、事实上"的含义时,英文合同常用 in effect, 而不是 in fact。

9. Counterpart, copy, duplicate, original

在英文合同中,counterpart, copy, duplicate, original 都用做表示合同一式几份。Counterpart, copy 和 duplicate 指副本,而 original 指的是正本,而且 duplicate 就有双重双份的意思,也常见 in duplicate 的用法,与此类似的还有 in triplicate(一式三份), in quadruplicate(一式四份), in quintuplicate(一式五份), in sextuplicate (一式六份), in septuplicate(一式七份), in octuplicate (一式八份), in nonuplicate (一式九份), in decuplicate (一式十份)等等。

例如: This Agreement may be executed simultaneously in two or more counterparts. Each counterpart shall be deemed an original, and all of the

counterparts together shall constitute but one and the same instrument.

本协议文本可同时签署两份或多份副本。每一副本应视为一份原件，所有副本一起应构成唯一同一文件。

10. Incur

英文合同中 incur 指"招致，引起"，相当于基础英语中的 cause。通常以过去分词 incurred 形式出现。

例一：In case her age exceeds 15 years, the *extra average insurance premium* thus incurred shall be borne by the Seller.

如果她的年龄超过 15 岁，则由买方承担因此产生的平均保险费以外的费用。

例二：No costs incurred in the manufacture, sale, distribution or exploitation of the articles shall be deducted from any royalty payable by Licensee.

产品的生产、销售、分销或开发引起的花费不得从被许可方的使用费中扣除。

11. To-wit

作为法律专用语，to-wit 的意思为"即"，相当于基础英语中的"that is to say(i. e.)"。

例如：WITNESSETH: That for and in consideration of the sum of One Million Eleven Thousand One Hundred Fifty Dollars ($1,011,150.00) cash in hand paid by the party of the second part to the party of the first part and other good and valuable consideration, the receipt and sufficiency of all of which are hereby acknowledged, the said party of the first part does hereby bargain, sell, grant and convey, *in fee simple*, with general warranty of title, unto the party of the second part, the following, to-wit:...

兹证明(通常省略不译)：兹以乙方支付甲方的一百零一万一千一百五十美元现金和其他为约因，特此确认充分并予接受，上述甲方由此交易、出售、转让________，对所有权向乙方作一般保证如下，即：……

12. Sanction, approval, examination

• 英文合同表示审批、批准时，常常使用这几个词，sanction 尤其专用于合同。

例一：The amendment of the contract or other appendices shall come into

force only after a written agreement has been signed by Party A and Party B and approved by the original examination and approval authority.

本合同的修改或其他附件当且仅当甲乙双方签署完书面协议后并经原审批机关批准后方能生效。

例二: This sanction is lifted prospectively upon the filing of a proper registration.

妥当的登记申请才会提交审批。

• 此外,sanction 在英文合同中也常作“制裁”解。

例句:If Licensee is joined in such proceeding, Licensor shall indemnify and hold harmless Licensee from and against any claim, sanction, liability, damages, attorney's fees, judgments or orders of any kind arising out of such proceeding.

如果被许可方参加该诉讼,许可方则应保证赔偿许可方由该诉讼导致的任何索赔、制裁、债务、损害赔偿、律师费、判决或任何裁令并保证免除被许可方有关责任。

13. Do sth. in its entirety

英文合同中 do sth. in its entirety 相当于基础英语中的 do sth. totally 或 do sth. as a whole,表示完全彻底地做某事。

例句: The Aggregate Revolving Commitment (and the Revolving Commitment of each Bank) shall terminate in its entirety on April 15, 1998 unless the Closing Date shall have occurred on or prior to such date. 联合周转协议(及各银行的周转协议)应在 1998 年 4 月 15 日完全终止,除非结算发生在当天或先于该日期。

14. Encumbrance, mortgage, charge, pledge, security, lien, security

• mortgage 相当于我国法律的抵押;pledge 相当于质押;lien 相当于留置;security 相当于担保,保证。

• encumbrance: A liability or claim which burdens property, e.g., a lease, mortgage, easement, restrictive covenant, rentcharge...(*Dictionary of Law*, 6th edition, L. B. Curzon)指在财产上设定的债务或债权,如租赁、抵押、地役、限制性契约,收租。试译为他物权。

• charge: An encumbrance, e.g., on land, which secures payments for money...(Idem) 一种担保物权,如土地上设定的用于付款的担保,保证。

例一:Seller warrants that the goods are now free, and that at the time of

delivery shall be free from any security interest or other lien or encumbrance.

卖方保证货物现无约束，交付时应没有设定担保物权、其他留置权或债权。

例二：During the joint venture term of the Joint Venture Company, Without Party B's written consent, Party A shall not create any option, right to acquire, mortgage, charge, pledge, lien, or any other form of security or encumbrance on, over, or affecting the whole or any part of its equity interest in the Joint Venture Company.

本合资公司合营期间，未经乙方书面同意，甲方不得对本合资公司所有或部分股权设定期权、购并权、抵押权、保证、抵押权、留置权或其他任何形式的担保或债权，或因以上设定影响本合资公司的所有或部分股权。

15. Pertinent, relevant

这两个词都是作为形容词“有关的，相关的”含义，出现在英文合同中，pertinent 似乎较 relevant 更为正式。

例一：All activities of the Cooperative venture company shall be governed by the laws, decrees and pertinent rules and regulations of the People's Republic of China.

合作经营企业的一切活动均应受中华人民共和国的法律、法令及有关规定和规章约制。

例二：In accordance with the Law of the People's Republic of China on Chinese-Foreign Cooperative Joint Ventures and other relevant Chinese laws and regulations, ABC Company and XYZ Company, in accordance with the principle of equality and mutual benefit and through friendly consultations, agree to jointly set up a Cooperative venture in Beijing, the People's Republic of China.

根据中华人民共和国中外合作企业法及有关法律法规，ABC 公司与 XYZ 公司，本着平等互利的原则，经过友好协商，同意共同在中华人民共和国北京设立合作企业。

16. Seek recourse to, resort to

在英文合同中都表示“求助于，诉诸”的含义。

例一：The arbitration shall take place in Beijing and the decision of the Arbitration Commission shall be final and binding upon both parties; neither party shall seek recourse to a law court or other authorities to appeal for revision of the

decision. Arbitration fee shall be borne by the losing party.

仲裁应在北京进行。仲裁委员会的裁定应为终局性,对双方均有约束力。任一方不得诉诸法院或其他机构上诉寻求修正该裁定。仲裁费应由败诉方承担。

例二:The exercise of a remedy does not waive the right of either party to resort to arbitration or reference.

任一方行使补救权利不放弃其诉诸仲裁或仲裁程式的权利。

第二节 英语合同的常用句型(Sentence Patterns)

一、引导条件从句的句型

in the event that(短语为 in the event of), in case(短语为 in case of), providing (that), provided (that), on the conditions that, if (if and whenever), where, in so far as(insofar as), should, suppose/supposing(that)

在英文合同中,以上这些词常用来引导条件从句表示"如果、假如"等情形,基础英语中常用的"as long as"在英文合同中非常鲜见。

例一:In the event that the Contract Price or any other terms of the Contract changes after the issuance of the Letter of Credit (or Letter of Guarantee) the Owner shall arrange for such Letter to be amended accordingly as soon as possible after any such changes. 如果在信用证(或保函)开出后,合同总价或合同其他条款发生变化,业主应尽快安排对信用证(或保函)进行相应的修改。

例二:In case part of or all know-how of the above-mentioned technical contents have been published by Party B or Third Parties A obtains evidence of such publication, then Party A shall no longer be responsible for keeping secret and confidential the part already published. 如上述专有技术的一部分或全部已由第三方公布,而甲方也掌握了已公布的证据,则甲方不再承担保密义务。

例三:15% of the above contract price, e. g. US $ 21, 000. 00 shall be paid by Party A to Party B by M/T within 30 days after Party A has received from Party B the following technical documentations and documents and providing that they are in conformity with the contract:甲方从乙方处收到以下技术资料和文件后 30 天内应信汇乙方上述合同总价的 15%,也就是 21000 美元,但该技术资料和文件应符合本合同要求。

例四:Either party may at anytime replace the chairman, deputy chairman or

director(s) it has appointed, provided that it gives written notice to the Joint Venture Company and the other party. 任何一方可随时更换自己委派的董事长、副董事长或董事,但必须书面通知合资公司和合资的另一方。

需要注意的是,provided that 通常语气上有转折的含义,不宜翻译为"假如,如果";译为"但是",则译文过渡自然,符合汉语表达的规范。

例五:Should the seller make delivery on time as stipulated in the Contract with the exception of Force Majeure specified in Clause18 to this contract, the Buyer shall agree to postpone the delivery on condition that the Seller agree to pay a penalty which shall be deducted by the paying bank from the payment under negotiation. 如果卖方并非因本合同第 18 条规定的不可抗力事件而未按合同规定的期限交货,那么,只要卖方同意支付罚金,并由付款行从议付款中扣除,买方便同意卖方延期交货。

句中出现两处条件从句,should 引导的从句属于非真实条件句,即虚拟语气,表示该条件发生的可能性很小,也就是说是当事人不希望出现的不利情况。而 on condition that 引导的条件从句,往往表示只要某情况出现,就如何如何。

例六:Notwithstanding the completion of the sale and purchase of the ________ ordinary shares in the Company, the terms and conditions of this agreement shall remain in full force and effect as between the parties hereto in so far as the same are not fulfilled. 即使买卖公司________股普通股已经结束,只要该行为尚未履行完毕,本协议条款对双方仍然完全有效。

例七:In all cases where Licensee desires artwork involving articles which are the subject of this license to be executed, the cost of such artwork and the time for the production thereof shall be borne by Licensee. 如果被许可方需要的工艺品涉及本许可将履行的标的,则该工艺品的费用和生产该工艺品的时耗应由被许可方承担。

例八:As an example, suppose that Stamps. com has a partnership agreement with a company called "Internet Marketing". In this example, "Partner Name" would be "Internet Marketing". 试举一例,如果 Stamp. com 公司与一家名叫 Internet Marketing 的公司有一合伙协议。本例中,该"合伙名称"就是"Internet Maketing"。

If and whenever the attorney at law designated by Party B comes to work with Party A, Party A shall offer all sufficient and necessary facilities, arrange the said legal counsel with an office, appoint a company officer to assist legal

counsel with his function, provide relevant information and write and print legal draft for such legal counsel. 乙方律师到甲方工作时,甲方应充分给予安排,安排法律顾问办公场所,选派干部协助律师工作,提供有关情况,缮写、打印稿件等。

相关链接:in no case, in no event, in the case of, in any case 等

in no case 和 in no event 表示"决不"即无论怎样都不行。

例如:Vessel over 20 years of age shall in no event be acceptable to the Buyer. 船龄超过20年的,买方概不接受。

In the case of 就什么来说,关于, in any case 无论如何

例如:In the case of dangerous and/or poisonous cargo (es), the Seller is obliged to take care to ensure that the nature and the generally adopted symbol shall be marked conspicuously on each package. 关于危险或有毒货物,卖方有义务照管确保其属性安全且应在每一包装上标注通常采用的标识。

二、表示"某物所有权属于某人"的句型

Sth. is (shall remain) the property of sb., the title of sth. shall be vested in sb.

英语合同表示"某物所有权属于某人"时,常用到这两个句型。如果用 the ownership of sth. belongs to sb.,或者 sb. owns/possesses sth. 就不够正式,而且 possess 只指目前属于某人,并不能说明获得的来源,而 own 只表示"对……的合法占有"。

例一:Any drawings or technical documents interested for use in the Construction of the Plant or of part thereof and submitted to the Seller by the Buyer prior or subsequent to formation of the Contract remain the exclusive property of the Buyer.

本合同订立前后由买方送交卖方用于建筑设备或其部分设备的图纸或技术资料仍为买方的专有财产。

例二:Licensee hereby agrees that at the termination or expiration of this agreement Licensee will be deemed to have assigned, transferred and conveyed to Licensor any rights, equities, good will, titles or other rights in and to the Name

which may have been obtained by Licensee or which may have vested in Licensee in pursuance of any endeavors covered hereby, and that Licensee will execute any instruments requested by Licensor to accomplish or confirm the foregoing.

被许可方特此同意本协议终止或届满时，被许可方视为向许可方转让被许可方因该名称可能已获得或经努力已拥有的任何权利、权益、商誉、所有权或其他权利，并且被许可方应在许可方的要求下签署任何文件以完成或确认上述转让。

三、It is + p. p that(past participle 过去分词) + clause

英文合同在使用被动语态时，有一些常见的特殊句型：

- It is agreed that + clause

例一：It is mutually agreed that the certificate of quality and quantity of weight issued by the manufacturer shall be part of the document for payment with the adopted Letter of Credit. 双方同意以制造厂出具的品质、数量或重量检验证明书作为有关信用证项下付款的单据之一。

例二：It is expressly agreed that Lessee will not, without obtaining prior written permission of Lessor, assert on its behalf, or on behalf of Lessor, any immunity from taxation based on the tax-exempt status, if any, of the Lessor. 双方明确同意承租人未经出租人事先书面同意，不得自行或代表出租人基于出租人的免税身份主张免税，如果出租人有该身份。

- It is understood that + clause

例一：It is strictly understood that the Sellers can not be held responsible for non-delivery of delayed delivery of the goods ordered if the situation is caused by Force Majeure, such as war, rebellion, fire, strike, new levies imposed by government, mistakes in telegrams, inability of, or refusal by the manufacturers to fulfill this Contract or any other causes beyond Seller's control. 严格明确卖方对于自己无法控制的不可抗力，如战争、叛乱、火灾、罢工、政府新征税、电报错误、生产厂商无能力或拒绝按合同生产，致使的已定货物不能发货或迟延发货概不负责。

例二：It is understood that the Seller shall not be liable for any discrepancy of the goods shipped due to causes for which the Insurance Company, Shipping Company, other transportation organizations and/or Post Office are liable.

双方明确卖方概不承担属保险公司、装运公司或其他运输机构、邮局责任范围内原因所造成已装运货物的瑕疵责任。

• It is stressed that + clause

例句:It is essentially stressed that the Buyers are requested to sign and return the duplicate of this Contract within 3 days from the date of receipt. In the event of failure to do this, the Sellers reserve the right to cancel the Contract. 必须强调:买方应于收到本合同之日起3天内签字并退还合同的副本,如买方不这样做,卖方保留取消合同的权利。

四、Saving Clause

• 在英文合同中 Saving Clause(除外条款,但书条款)通常有 save that 句型和 save as 句型,表示"……者例外"。

例一:Subject to clause 18.4, each party shall bear its own costs arising out of or in connection with the preparation, negotiation and implementation of this Agreement save that if this Agreement is lawfully rescinded by the Purchaser the Vendors shall pay to the Purchaser its accountancy, legal and other costs and expenses in relation to the investigation of the Company prior to the date hereof and the preparation and negotiation of this Agreement.

在遵守第18.4条的条件下,每一方应各自承担其准备、协商和实施本协议所产生的或与之有关的费用,除非如本协议系买方依法解除,则卖方应向买方支付与本协议订立前调查公司以及准备和协商本协议有关的会计、法律和其他花费和支出。

例二:Save as expressly provided herein, this Agreement may be amended or terminated, and any of the terms hereof waived, only by a document in writing specifically referring to this Agreement and executed by the parties hereto or, in the case of a waiver, by the party waiving compliance.

除非本协议明确规定,本协议可做修改或终止,本协议任一条款可放弃,仅当通过书面文件特别提及本协议并由本协议双方执行或一方通过弃权声明放弃遵守。

• 此外,也常见用 provison 表示限制条款或但书。

例一:5.6 Legal Proceedings; Injunctions. (a) The Seller, the Buyer and the Company shall use commercially reasonable efforts (subject to the provision in Section 5.6(b)) to cooperate with each other in connection with any claim, action, suit, proceeding, inquiry or investigation with any other person which relates to the execution and delivery of this Agreement or the consummation of the transactions contemplated hereunder.

法律诉讼;禁止令。(1)卖方、买方和本公司应竭尽全力(除本条第二款的但书规定外)互相配合处理涉及本合同履行与交付及本合同项下预期交易完成的与他方有关的索赔、诉讼、案件、诉讼程式、质询或调查。

例二:Tenant shall not be required to join in any proceedings referred to in the provision at the end of 4.6 hereof unless the provisions of any law, rule or regulation at the time in effect shall require that such proceedings be brought by or in the name of Tenant, in which event Tenant shall join and cooperate in such proceedings or permit the same to be brought in its name, but shall not be liable for the payment of any costs or expenses in connection with any such proceedings, and Landlord shall reimburse Tenant for, and indemnify and hold Tenant harmless from and against, any and all costs or expenses which Tenant may reasonably pay, sustain or incur in connection with any such proceedings.

承租人不得被应要求参加本合同第四条第六款最后但书/限制性条款提及的任何诉讼,除非当时生效的法律法规要求该诉讼应由承租人或以承租人名义提起,此种情况下,承租人应参加配合该诉讼或允许该诉讼以其名义提起,但概不承担任何与该诉讼有关的任何费用和花费,业主应偿还并保证赔偿承租人合理支付的因该诉讼产生或遭受的全部费用和花费且确保承租人免于以上责任。

五、As 句型

参看本章第一节 as 的用法

六、Upon sth.

英文合同中表达"一经……,就……"的含义时,不用基础英语中的 as soon as, 而用 upon sth. 表达。

例如: Upon expiration of such term of contract, the contract shall automatically become void and null.

合同一经届满则自动失效。

七、Unless otherwise 和 except (as) otherwise

英文合同中表示"除非另有规定"时,常常用到这两个句型。它们在句中的位置非常灵活,句首、句末或者句中都能看到它们的身影,后接 stipulate, provide, require, state, specify 等动词或其过去分词。

例一:On the Transfer Date, New Company shall transfer to B, free from any

lien or encumbrance created by New Company and without the payment of any compensation, all its right, title to and interest in the infrastructure project, unless otherwise specified in the Agreement or any supplementary agreement.

新公司应在转让日向乙方转让其在基础设施项目中的全部权利、所有权和权益,免于新公司创设的任何质押或财产担保,除非本协议另有规定或补充协议。

例二:The arbitration fee shall be borne by the losing Party except otherwise awarded by the Arbitration Institute.

仲裁费由败诉方承担,除非仲裁机构另有裁决。

例三:Except as otherwise provided herein, all import permits and licenses and the import duties, customs fees and all taxes levied by any government authority other than the Seller's country shall be the sole responsibility of the Buyer.

除非本协议另有规定,所有进口许可证照和政府机关(不是卖方国家)征收的进口关税和所有税费均应由买方独自承担责任。

八、表示"尽力做某事"的句型

Use all reasonable endeavors (efforts) to do sth., make full endeavors (efforts) to do sth., exert one's effort(s) to do sth., exert oneself to do sth.

英文合同中表示"尽力做某事"时,常常用到这几个句型,而不用基础英语中 try one's best to do sth. 等句型。

例一:Except as contemplated by this Agreement, from the date hereof through the Closing Date, Mattel shall cause each TLC Subsidiary to use commercially reasonable efforts to conduct its business in the ordinary course in all material respects, and shall use commercially reasonable endeavors to preserve intact its business relationships, keep available the service of its employees and maintain satisfactory relationships with its suppliers and customers.

除非本协议预期,从本协议日期到成交日,Mattel 公司应促使 TLC 子公司竭尽全力在所有实质方面按通常程式进行交易。并应尽力来保持其商业关系完整,可获得其员工的服务并与供应商和客户维持良好的关系。

例二:However, both parties shall make efforts to get the ratification within 60 (sixty) days.

然而,双方应努力在 60 天内获得批准。

例三:Each of Quotesmith and IIS agrees to exert its commercially reasonable

efforts so that IIS can begin providing instant quotes on QIM in as short a time as the capabilities and technologies of each party will allow.

Quotesmith 和 IIS 均同意尽其全力使得 IIS 在各方能力和技术许可的范围内尽快开始向 QIM 公司提供即时报价。

例四:Promptly following the Effective Time, the shareholders of Tunes who are employed by JAMtv or Merger Sub shall exert their best efforts to cause all employees of Tunes and Merger Sub to execute in favor of Merger Sub proprietary rights agreements substantially similar to JAMtv's existing employee proprietary rights agreement.

生效时间后,被 JAMtv 公司或 Merger Sub 公司所聘的 Tunes 公司股东应立即竭尽全力促使 Tunes 公司和 Merger Sub 公司的所有员工执行 Merger Sub 公司控股权协议,该协议实质上与 JAMtv 公司现有的员工控股权协议类似。

第三节 合同各部分常用例句与用词 (Sample Wording and Sentences in Each Part)

英文合同由标题(Title)、前言(Preamble)、正文(Habendum)、附录(Schedule)及证明部分即结尾词(Attestation)五大部分构成。标题部分由于比较简单,在此就不多述,而附录由于不是所有合同都具备,固定的句式用词很少,现就前言(Preamble)和证明部分即结尾词两个方面介绍如下。

1. 前言部分

前言又分为合同方(Parties)和叙述(Recital)两部分,合同方部分主要载明合同当事人的名称或者姓名、国籍、主营业所在地或住所地以及合同签订的日期等内容,通常有两种句型:

一种是完整的句子,以 This Contract is made on ________, 20 ______, by and between ABC Company Ltd. (hereinafter called Party A) and XYZ Company Ltd. (hereinafter called Party B)为代表。

另一种则是由名词主语加动词过去分词构成的短语,如 Agreement made this ________ day of ________, between ________ (hereinafter called "Licensor"), and ________(hereinafter called "Licensee")。

其中,made 后常用 entered/concluded into 等并列,this 后直接接日期,或者用 on,后接方式较为灵活,但接日期更为正式。而表达合同各方时还成对出现 of /as one part(y), of/as the other part(y), 或是 of/as one hand, of/as the

other hand。表示"以下简称"时通常用 hereinafter called 或是 hereinafter referred to as, 甚至有直接把简称写到括弧里的情形。

• 合同方(Parties)的句式范例:

例一: This Contract made on April 1, 19 ____, at ________, China, between ABC Co. with its principal office at ________, China (hereinafter called Party A), and XYZ Co. with its principal office at ________, USA (hereinafter called Party B). 本合同于19 ____年4月1日于中国________签订,合同双方为ABC公司(以下简称甲方),其主营业地位于中国________,和XYZ公司(以下简称乙方),其主营业地为美国________。

例二: This contract is signed on this ________(date) of ________(year) in ________(place) by and between ________(hereinafter referred to as Party A) and ________ (hereinafter referred to as Party B). 本合同由________公司(以下简称甲方)与________公司(以下简称乙方)于________年____月____日于________地签订。

例三: AAA Corporation, Beijing, China (hereinafter referred to as the Buyer) as one party and ________(hereinafter referred to as the Seller) as the other party agree to authorize their representatives to sign the present Contract under the following terms and conditions... 合同一方中国北京AAA公司(以下简称买方)和合同另一方________公司(以下简称卖方)同意授权各自代表签署现有合同,条款如下……

例四: This contract is made by and between the Sellers and the Buyers; Whereby the Sellers agree to sell and the Buyers agree to buy the undermentioned goods according to the terms and conditions stipulated below and overleaf... 本合同由买卖双方签订,凭此合同,卖方同意出售、买方同意购买根据下文和背面规定条款的如下货物……

• 前言的叙述(Recital)部分,往往由 whereas 引导的句子(鉴于条款)后,再接 now therefore...(最为常见)等结构。

例一: Now therefore, in consideration of the premises and covenants described hereinafter, Party A and Party B agree as follows...

由此,以上述各点和以下规定契约为约因,甲乙双方约定如下……

例二: Now therefore, the parties hereby agree as follows...

由此,双方特约定如下……

例三: Now, Therefore, in consideration of the mutual promises herein contained, it is hereby agreed...

由此,以相互本协议包含的承诺为约因,双方特此约定如下……

例四: Now it is hereby agreed as follows...

特此约定如下……

例五:now, therefore, the parties agree as follows...

由此,合同方约定如下……

例六:It is understood and expressively agreed that...

双方确认并明确约定如下……

2. 证明部分,即结尾词(Attestation)

英文合同的该部分,通常表达“双方签字盖章,特此为证”的含义。主要是由 in witness where of 或者 in testimony whereof 后接常用的句子。通常有如下形式:

例一:In witness whereof, the parties hereto have caused their respective duly authorized representatives to execute the Agreement on the ________ day of ________ in the year of ________.

合同双方授权其代表于________年____月____日签订本协议,特此为证。

例二:In witness whereof, the parties have caused this instrument to be duly executed as of the day and year first above written.

双方确认本协议于上述所具日期起签订生效,特此为证。

例三:in witness whereof, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the day and year set forth below.

合同双方确认本协议自以下注明的日期起由其授权代表签字生效,特此为证。

例四: In witness whereof, the parties have executed this agreement at ________(designate place of execution) the day and year first above written.

合同双方于上述日期于________地(指定签订地)签订本协议,特此为证。

例五: In testimony whereof, Assignor has caused this Assignment to be executed by its officer(s) thereunto duly authorized.

转让方授权其官员签署生效本转让协议。



条款篇

TERMS AND CONDITIONS



第四章 英文合同一般条款
General Clauses

When signing a contract,
it helps to remember
"*the big-type gives, and the small-type takes away*".

(*Groucho Marx*)

签订合同，
有助于记住
"大的字体是付与，小的字体是拿走"。

（格鲁克·马克思）



英文合同的一般条款是相对于特殊条款而言的,指不管合同的性质如何,通常都会出现的条款。例如,不论是买卖、合资、租赁、借贷、技术转让等合同,尽管缔约目的各自不同,却同样少不了约定违约与免责、解除与终止等一般性的约定,记载这些一般性约定的条款,就叫做一般条款。

详细来说,一般条款又可分为两大类:第一种为与当事人所要规范的交易的实体权利义务有关系的一般条款,这种一般条款虽然在每一种性质的合同中都会记载,但是内容上依照各类合同性质可能大相径庭。第二种一般条款与合同特定的实体交易内容没有直接的关系,而仅规范倾向行政方面的事务,这种一般条款的重要性并不逊于第一种的一般条款,但是由于不论合同实体交易的性质为何,它们的内容与用语都非常相近,因此比较容易掌握与了解,通常称为"boilerplate"。以下就后者逐一介绍。

第一节 定义条款(Definition Clauses)

英文合同中,为了避免对某些重要的名词、概念出现理解上的争议,往往订立定义条款对合同中重复出现的具有特殊意义且容易引起争议的名词概念做出专门的解释。重要的英文合同往往第一章就是定义条款的部分。定义的名词往往在合同中以首字母大写的形式出现,在本书第二章第二节用词特点大写字母的运用部分已经涉及,在英文合同中,能够很容易辨识出定义条款。

定义条款常用的句型结构大致分为如下三种:

1. Shall be(construed as)结构

例一:As used in this Agreement, any gender shall be construed as including all other genders and the singular shall be construed as including the plural and the plural the singular, as the sense requires. 本协议所用某一性别应解释为包含其他性别,视语意要求单数应被解释为包括复数,视句子需要复数被理解为包括单数。

例二:The Acceptance Test Manual shall be the document prepared by A which will be used by A and the Purchaser FOR checking that the Equipment is in accordance with the specification and Approved Data. 验收实验手册系指由A提供的,供A与买方检验设备是否符合技术规格和认可资料的文件。

2. Shall mean 或 means 结构

例一：Know-how shall mean all the manufacturing technology and process engineering to manufacture the contract products which are required by Party A and which Party B possesses. Such technology engineering shall include technical details of all designs, operation drawings, technical documentations, manufacturing engineering, procedure and techniques. 专有技术系指所有乙方拥有甲方需要的用于生产本合同产品的生产技术和工艺技术。该技术应包括具体的设计、操作图纸、技术文件、生产工艺、流程和技术。

例二："Acceptance" means the acceptance by the Buyer of the Contract Plant which certifies the Supplier's fulfillment of the Contract in respect of any Performance Test required thereunder in accordance with Article 25. 3 (Acceptance) hereof. 验收系指买方接受合同设备，证明供应商就本协议第25条第3款规定所要求的性能测试合格，完成合同履行。

3. Shall refer to

例句：Contract products shall refer to the SIO2 and ITO conductive coating glass products which are in conformity with the technical specifications and standards as specified in Appendix I of this contract, e. g. the products manufactured by Party A with the know-how and equipment supplied by Party B. 合同产品系指符合本合同附件I规定技术规格和标准的SIO2和ITO导电涂层玻璃产品。如由甲方使用乙方提供专有技术和设备所生产的产品。

4. is/are 结构

例一：这种直接使用is或are的，英文合同中偶尔出现。System Parts are those which are necessary to B in the performance of this Agreement and derived from Approved Data and shall include but not limited to those parts which are manufactured by B's suppliers. Notwithstanding the foregoing, mutually agreed simulated and modified equipment used in lieu of the foregoing shall be deemed to be System Parts. 系统部件系指B执行本协议所必需的部件（从认可资料中可以查到），应该包括但不限于B制造的部件，经双方商定仿制或改进用以代替上述设备的也应视为系统部件。

例二："MOFCOM" is the Ministry of Commerce of the People's Republic of

China.

商务部即中华人民共和国商务部。

第二节 陈述与保证条款
(Representations and Warranties)

英文合同的陈述与保证条款一般分为两种。一种仅就双方的缔约、履约权利能力和行为能力等方面作出一般性的陈述与保证，例如：

Representations and Warranties of Party A
甲方的陈述与保证

Party A hereby represents and warrants to Party B as follows...
甲方兹此向乙方陈述与保证如下……

a. Party A is an enterprise duly organized, validly existing and in good standing as a legal person under the laws of China.
甲方系根据中国法律合法设立，有效存续并且声誉良好的企业法人。

b. Party A has full legal right, power and authority to execute and deliver this Contract and all of the contracts and documents referred to in this Contract to which it is a party and to observe and perform its obligations hereunder and thereunder.
甲方具有完全的法律权利、权力和授权来签署、交付本协议和本协议提及的其作为一方的所有合同和文件，并遵守和履行本合同以及该等合同和文件项下其义务。

c. Party A has taken all appropriate and necessary corporate action to authorize the execution and delivery of this Contract and all of the contracts and documents referred to in this Contract to which it is a party and to authorize the performance and observance of the terms and conditions hereof and thereof.
甲方已经采取了所有适当和必要的行动授权签署和交付本合同以及本合同提及其为一方的所有合同和文件，并遵守本合同以及该等合同和文件项下的条款和条件。

d. Party A has obtained all consents, approvals and authorizations necessary for the valid execution and delivery of this Contract and all of the contracts and documents referred to in this Contract to which it is a party and to observe and perform its obligations hereunder and thereunder; *provided*, *however*, that this Contract is subject to the approval of the Approval Authority before the same may become effective.
甲方已经获得了有效签署和交付本合同以及本合同提及的其为一方的所有合同和文件所必要的所有同意、批准和授权并遵守和履行本合同以及该等合同和文件项下的义务,但条件是:本合同在生效前须经审批机关批准。

另一种对陈述与保证条款会对具体事项作出陈述与保证,例如:

Sellers' warranty as to absence of litigation
卖方无讼累之保证

Sellers hereby represent and warrant that there is no pending administrative, civil, or criminal litigation involving the business sold, nor any demands or claims that would materially and adversely affect the same or Seller's financial condition.
卖方兹此陈述并保证所出售之业务没有涉及任何未决的行政、民事或刑事方面的诉讼,也不存在可能会对该业务或卖方的财务状况产生重大不利影响的任何要求或请求。
In the event of breach of this warranty, Buyer may rescind this Agreement and any consideration paid by it to Sellers will be returned.
如果违背本保证,买方可解除本协议,已支付给卖方的任何对价应退还买方。

第三节 合同转让条款(Assignment Clauses)

合同的转让是指当事人的一方将合同权利和义务全部或部分转让给第三

方(A party assigns, wholly or in part, its contractual rights and obligations to a third party)。第三方是合同的受让人(assignee)。合同的转让(assignment of contracts)不同于合同的变更(modification),它是合同主体的变化。

例一:NO ASSIGNMENT. Neither party shall transfer or assign any rights or delegate any obligations hereunder, in whole or in part, whether voluntarily or by operation of law, without the prior written consent of the other party. Any purported transfer, assignment or delegation by either party without the appropriate prior written approval shall be null and void and of no force or effect. Notwithstanding the foregoing, without securing such prior consent, each party shall have the right to assign this Agreement or any of its rights or obligations to an Affiliate provided that such party continues to be liable for the performance of its obligations and either party shall have the right to assign this Agreement and the obligations hereunder to any successor of such party by way of merger or consolidation or the acquisition of substantially all of the business and assets of the assigning party relating to the Agreement.

不得转让。未经对方事先书面同意,无论出于自愿还是法律操作,任一方不得转让本合同项下任何权利或任何义务。任何未经事先书面批准的任一方所企图的转让一概无效。尽管前述,未获得该事先同意,任一方应有权转让本合同或本合同的任何权利或义务给关联公司,但该方继续对其义务的履行承担责任并且任一方应有权通过实质兼并、合并或并购本协议关联的转让方的业务和资产的方式转让本协议或本协议项下的义务给其继受方。

例二:ASSIGNMENT. Neither party's rights, duties or responsibilities under this Agreement may be assigned, delegated or otherwise transferred in any manner, without the prior written consent of the other party. Notwithstanding the foregoing, no such consent shall be required in connection with the assignment, delegation or other transfer of any such rights, duties or responsibilities (a) by a party to any affiliate which directly or indirectly controls, is controlled by or is under common control with such party, where such control is by more than fifty percent (50%) of the relevant voting power, or (b) in connection with any transaction, regardless of its form, in which all or substantially all of the assets of Lycos are acquired.

转让。未经他方事先的书面同意,任一方不得以转让、让渡或其他任何方式转让其本合同项下的权利、义务或责任。尽管前述,以下上述权利、义务或责任转让、让渡或其他让与无须上述同意:(1)由一方转让给任何该方直接或间接控

制,该方受控制或在通常控制下的关联公司,如果该控制不小于有关投票权的50%;或(2)不论形式,与任何 Lycos 全部或实质全部资产遭收购的交易有关。

例三:The Contractor shall not assign the Contract or any part thereof, or any benefit or interest therein or thereunder without the prior written consent of the Employer.

未经业主事先书面同意,承包方不得转让本合同或本合同的任何部分或本合同项下任何利益或权益。

例四:This Agreement may not be assigned without prior notice by either party. Such assignment is subject to the mutual consent and approval of any such assignment.

未经事先书面通知,本协议不得转让。上述转让以双方同意和对任一转让的许可为准。

第四节 完整合同与修改 (Entire Agreement/Amendment)

英文合同中的完整合同(entire agreement/complete agreement)条款是说明当事人关于本合同所约定的全部事项已经悉数记载到合同中,其余本合同外的任何书面或口头的约定概不作数。往往其后接有合同的修改方面的约定。

例一:Entire Agreement

This Agreement with Exhibits embodies the entire agreement and understanding between the parties hereto and supersedes all prior agreements and understandings relation to the subject matter hereof.

完整合同

本协议及其附件包含本协议双方间完整协议和磋商,取代以前所有与本协议标的有关的协议和磋商。

例二:Entire Agreement

This agreement contains the entire understanding of the parties. It may not be changed orally. This agreement may be amended or modified only in writing that has been executed by both parties hereto.

完整合同

本协议包含协议方的完整磋商。不得口头变更。本协议仅得以书面形式经协议双方签字方能修正或修改。

例三:Entire Agreement; Amendments; Severability; General

This Agreement, including all exhibits and schedules hereto, as amended from time to time in accordance with the terms of this Agreement, contains the entire agreement between the parties relative to the subject matters hereof. This Agreement or the Articles of Organization may only be amended or modified by a writing executed and delivered by Members owning not less than seventy-five percent (75%) of the Membership Interests, provided, however, that the provision in Paragraph 3.1 concerning appointment and election of Managers shall not be amended without the consent of the persons then entitled to serve as Managers. If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other persons or circumstances shall not be affected thereby, and the intent of this Agreement shall be enforced to the greatest extent permitted by law. The designations of Members and Managers as used herein shall include singular, plural, masculine, feminine or neuter as required by context.

完整合同，修正；可分离性；通则

本协议含其所有附件附表，可根据本协议条款随时修正，包含双方就本协议标的有关的完整协议。本协议或组织章程仅当拥有不少于75%成员利益的成员以书面形式签发交付始可修改或修正，但是如果第三节第一条有关任命的规定和经理的选任未经有资格出任经理的人等同意不得修正。如果本协议的任何规定或该规定对某人或某情形的适用在任何程度上应为无效或无法执行，本协议其余部分和该部分对其他人或其他情形的适用不得因此受影响，本协议的目的应按法律所允许的最大程度予以执行。在本协议中使用的成员或经理的指定应包含单数、复数，男性、女性或上下文所需的中性。

例四：Complete Contract

The terms and conditions found within this Contract constitute the complete and final understanding of the Seller and the Buyer (hereinafter "the Parties") with respect to the commodity referred to herein. No modification, extension or release from any provision hereof shall be effective unless the same shall be confirmed in writing by the Party to be bound.

完整合同

本合同内所设立的条款构成买方和卖方（以下简称合同双方）有关本合同提及的货物的完整和最终磋商。任何修改、扩展、解除除非经合同双方书面确认，概不生效，不产生任何约束力。

例五：Amendment

No provision of this Agreement or the Note may be amended, modified, supplemented, discharged or terminated, unless the Bank consents thereto in writing.

修正

除非本银行以书面方式同意，任何本协议的规定或记录不得修正、修改、增补、解除或终止。

第五节 赔偿与担保条款 (Indemnification and Warranty)

担保条款（Warranty Clauses）往往是对诸如品质、权利、履约等方面作出承诺，经常是与声明（Representative）、承诺（Covenant）一并出现使用。而赔偿条款（Indemnification/Hold harmless）其实是一种救济的约定，即如果合同当事人外的第三人对合同某一方当事人提起关于本合同的诉讼或其他损害赔偿请求时，所引起的责任及损失由合同另一方补偿，实际上由该方当事人最终承担了相关责任和损失。

例一：Warranty

The Seller warrants that all commodities will conform to the description set out in Clause 1. Save as aforesaid all representations, conditions and warranties of whatsoever nature are hereby excluded and extinguished.

担保

卖方保证所有商品符合第 1 条规定的规格说明。除了前述本协议在此排除和废止的任何性质的声明、条件或担保。

例二：Year 2000 Warranty

Tripod hereby represents and warrants to Licensee that the Licensed Software will perform its function without interruption or failure by reason of the calendar year in which used, whether before, during or after the year 2000, or by reason of errors in date processing, date recognition or other date dependent functions, provided that all other products used in combination with the Licensed Software, including without limitation operating systems and other software, properly exchange data with the Licensed Software. In the event of any breach of the foregoing warranty, Tripod shall, as Licensee's sole remedy, modify the Licensed Software so as to comply with the foregoing warranty.

2000 年担保

Tripod 公司在此向被许可方声明担保如果与其他产品结合使用(包括但不限于作业系统及其他软件),正常地与所许可软件交换资讯,所许可软件不会因在 2000 年期间或 2000 年前后的使用或因日期进程、日期辨识或其他日期相关功能的错误导致运行中断或失灵。如果违反上述担保,Tripod 公司应修改所许可软件以符合上述担保,仅以此作为对被许可方的补救。

例三:Indemnification of Lessor

Lessee shall and does hereby agree to protect and save Lessor harmless against any and all losses or damage to equipment by fire, flood, explosion, tornado or theft and Lessee shall and does hereby assume all liability to any person whomsoever arising from the location, condition or use of equipment, and shall indemnify Lessor of and from all liability, claim and demand whatsoever arising from the location, condition, or use of equipment whether in operation or not, and growing out of any cause, and from every other liability, claim and demand whatsoever during the term of this Lease or arising while equipment is in the possession of Lessee. Lessee also agrees to promptly reimburse Lessor, in cash, for any and all personal property taxes levied against equipment and paid by Lessor.

出租人保证赔偿

承租人应由此同意保护并使出租人免于任何因火灾、洪水、爆炸、飓风、偷盗造成的任一和全部损失或对设备造成的损害。承租人应承担所有因设备位置、条件、使用所产生对任何人的责任。而且应保证赔偿出租人全部的责任、索赔或要求,无论是基于设备的位置、条件或使用与否,还是任何原因,以及保证赔偿无论在租约期间或承租人占有设备时所产生的其他责任、索赔和要求。承租人也同意立即以现金方式补偿出租人所支付的对设备征收的所有动产税费。

例四:Indemnification

The Company shall indemnify the Managers and Members to the fullest extent permitted or required by the Act, as amended from time to time. The Company may advance expenses incurred by the Managers or Members upon the approval of the Managers, provided such Manager or Member agrees to reimburse the Company unless it is finally determined that such Manager or Member is entitled to be indemnified by the Company against such expenses. The Company may also indemnify its employees and other agents to the fullest extent permitted by the law, provided that a Majority in Interest of the Members first approve such indemnification. The indemnification provided herein shall be deemed exclusive

of any other rights to which a person seeking indemnification may otherwise be entitled, shall continue as to a person who ceases to be a Manager or Member, shall inure to the benefit of the estate, heirs, personal representatives or other successors of the indemnity, and shall not be deemed to create any rights for the benefit of any other person or entity.

保证赔偿

本公司应保证对经理和成员按法律所要求或允许的最大限度予以赔偿,随时修订。本公司可按经理的批准垫付经理或成员所遭受的费用,但该成员或经理同意偿还本公司,除非最终决定该成员或经理有权获得公司就该费用的赔偿。本公司也可对其员工或其他代理人按法律所允许的最大限度保证赔偿,但首先经股东多数股权批准该赔偿。本协议所规定的赔偿应视为排除任何寻求赔偿人可另行获得的任何其他权利,应适用于财产利益、继承利益、个人代表不得或其他赔偿的继受人,并不得视为对其他个人或实体的利益创设任何权利。

第六节 解除与终止条款
(Rescission and Termination)

英文合同中对于合同履行的期间通常会约定解除和终止的条款,合同的解除(Rescission)与合同的终止(Termination)不同,合同解除是单方法律行为(one-sided act in law),由于主客观情况的出现,导致不可能或不必要履行合同时,当事人一方可根据法定或约定,通知另一方解除原合同法律关系。合同的终止是基于合同履行完毕、生效裁决或者合同当事人合意(meeting of minds)等法律事实,而导致合同法律关系归于消灭。需要注意的是:合同的终止(termination)和合同的中止(suspension)的区别,前者是完结了合同法律关系,后者是合同履行的暂时停止。

1. 合同解除

法条链接:《中华人民共和国合同法》第九十四条 有下列情形之一的,当事人可以解除合同:

(一)因不可抗力致使不能实现合同目的;

(二)在履行期限届满之前,当事人一方明确表示或者以自己的行为表明不履行主要债务;

(三)当事人一方迟延履行主要债务,经催告后在合理期限内仍未履行;

(四)当事人一方迟延履行债务或者有其他违约行为致使不能实现合同目的;

(五)法律规定的其他情形。

Article 94 The parties to a contract may rescind the contract under any of the following circumstances:

(1) The purpose of the contract is not able to be realized because of force majeure;

(2) One party to the contract expresses explicitly or indicates through his acts, before the expiry of the performance period, that it will not perform the principal debt obligations;

(3) One party to the contract delays in performing the principal debt obligations and fails, after being urged, to perform them within a reasonable time period;

(4) One party to the contract delays in performing the debt obligations or commits other acts in breach of the contract so that the purpose of the contract is not able to be realized; or

(5) Other circumstances as stipulated by law.

例句:Rescission

If at any time after acceleration of the maturity of the Loans, the Borrower shall pay all arrears of interest and all payments on account of principal of the Loans and Reimbursement Obligations which shall have become due otherwise than by acceleration (with interest on principal and on overdue interest, at the rates specified in this Agreement) and all Events of Default and Potential Events of Default (other than nonpayment of principal of and accrued interest on the Loans due and payable solely by virtue of acceleration) shall be remedied or waived pursuant to Section 12.08, then by written notice to the Borrower, the Requisite Lenders may elect, in the sole discretion of such Requisite Lenders, to rescind and annul the acceleration and its consequences and thereupon shall release any deposit made pursuant to Section 10.02(b); provided, however, that no rescission shall occur after the earlier of 30 days after the date of acceleration or any Event of Default specified in paragraph (f) or (g) of Section 10.01. No action pursuant to this paragraph (c) shall affect any subsequent Event of Default or Potential Event of Default or impair any right or remedy consequent thereon. The provisions of the preceding sentence are intended merely to bind the Lenders to a decision which

may be made at the election of the Requisite Lenders; they are not intended to benefit the Borrower and do not give the Borrower the right to require the Lenders to rescind or annul any acceleration hereunder, even if the conditions set forth herein are met.

解除

在本贷款加速期间届满后的任何时间,借款人应支付所有拖欠利息和借款本金账户下的所有款项。并且根据第12.08条除加速条款外的偿还债务(根据本协议规定的利率加收本金利息和逾期利息)及所有违约事件和潜在违约事件(不是根据加速条款到期应付的贷款本金和累积利息未付)补救或放弃。则通过书面方式通知借款人,必需的贷款人可自行决定选择解除并撤销加速条款及其后果,由此应解除根据第10.02条第二项的押金;但是,如果加速期后前30天后或出现任何第六节或第七节规定的违约事件则不得解除本协议。根据本节(第三节)的任何行为概不影响任何后续的违约事件或潜在违约事件或损害因此产生的任何权利或补救后果。上句的规定仅意图限制贷款人决定必需贷款人的选择;并不意图使借款人获益也并不赋予借款人权利来要求贷款人解除或撤销本协议项下的加速条款,即使达到本协议规定的条件。

2. 合同终止

法条链接:《中华人民共和国合同法》第九十一条　有下列情形之一的,合同的权利义务终止:

(一)债务已经按照约定履行;

(二)合同解除;

(三)债务相互抵销;

(四)债务人依法将标的物提存;

(五)债权人免除债务;

(六)债权债务同归于一人;

(七)法律规定或者当事人约定终止的其他情形。

Article 91 The rights and obligations of contracts shall be terminated under any of the following circumstances:

(1) The debt obligations have been performed in accordance with the terms of the contract;

(2) The contract has been rescinded;

(3) The debts are mutually offset;

(4) The obligor lodges the object according to law;

(5) The debt obligations have been exempted by the obligee;

(6) The creditor's rights and debt obligations are assumed by the same person; or

(7) Other circumstances for termination as stipulated by the laws or agreed upon by the parties in the contract.

例一:In case of inability to fulfil the contract or to continue operation due to heavy losses in successive years as a result of force majeure, the duration of the cooperative venture and the contract shall be terminated before the time of expiration after being unanimously agreed upon by the board of directors and approved by the original examination and approval authority.

如果因不可抗力致使在下一年度遭受严重损失而不能履行合同或继续经营,经董事会一致同意,并经原审批机关批准,合作企业期间和本合同应在期限届满前终止。

例二:With the unanimous agreement of the Board of Directors and approval of the original inspection department, the Joint Venture can be terminated prior to the original term or the contract be terminated in advance if the Joint Venture suffers losses in consecutive years and is incapable of going on with the business for certain reasons.

经董事会一致同意并经原审批机关批准,本可在原期间之前提前终止,或如果本合资企业连续年度遭受损失且出于某些原因不能继续经营,则本合同应提前终止。

第七节 违约条款(Default Clauses)

英文合同的违约条款(Default Clauses/Breach of Contract),一般是合同履行过程中,违约方(Defaulting Party)对受害方(Damaged Party)的救济。

法条链接:《中华人民共和国合同法》第一百零七条 当事人一方不履行合同义务或者履行合同义务不符合约定的,应当承担继续履行、采取补救措施或者赔偿损失等违约责任。

Article 107 Where one party to a contract fails to perform the contract obligations or its performance fails to satisfy the terms of the contract, the party shall bear such liabilities for breach of contract as to continue to perform its obligations, take remedial measures, or compensate for losses.

英文合同中的违约条款通常分为如下几种:

1. 赔偿损失(Compensation for damages)

例句:Damages

With the exception of late delivery or non-delivery due to "Force Majeure" causes, if the Seller fails to make delivery of the goods in accordance with the terms and conditions, jointly or severally, of this Contract, the Seller shall be liable to the Buyer and indemnify the Buyer for all losses, damages, including but not limited to, purchase price and/or purchase price differentials, deadfreight, demurrage, and all consequential direct or indirect losses. The Buyer shall nevertheless have the right to cancel in part or in whole of the contract without prejudice to the Buyer's right to claim compensations.

损害赔偿

除非因不可抗力导致的交付迟延或交付不能,如果卖方未能根据本合同的条款交付货物,卖方应对买方承担责任并保证赔偿买方因此造成的损失、损害,包括但不限于购买价格或购买差价、空仓费、延滞费以及所有因此产生的直接或间接的损失。然而买方应有权解除合同的部分或整个合同,不得妨害买方行使索赔权利。

法条链接:《中华人民共和国合同法》第一百一十三条 当事人一方不履行合同义务或者履行合同义务不符合约定,给对方造成损失的,损失赔偿额应当相当于因违约所造成的损失,包括合同履行后可以获得的利益,但不得超过违反合同一方订立合同时预见到或者应当预见到的因违反合同可能造成的损失。

经营者对消费者提供商品或者服务有欺诈行为的,依照《中华人民共和国消费者权益保护法》的规定承担损害赔偿责任。

Article 113 Where one party to a contract fails to perform the contract obligations or his performance fails to satisfy the terms of the contract and causes losses to the other party, the amount of compensation for losses shall be equal to the losses caused by the breach of contract, including the interests receivable after the performance of the contract, provided not exceeding the probable losses caused by the breach of contract which has been foreseen or ought to have been foreseen when the party in breach concludes the contract.

《中华人民共和国合同法》第一百一十九条 当事人一方违约后,对方应当采取适当措施防止损失的扩大;没有采取适当措施致使损失扩大的,不得就扩大的损失要求赔偿。

当事人因防止损失扩大而支出的合理费用,由违约方承担。

Article 119 After one party violates a contract, the other party shall take proper measures to prevent from the amplification of losses; if the other party fails to take proper measures so that the losses are amplified, it may not claim any compensation as to the amplified losses.

2. 违约金(Default Penalty)

违约金可分为法定违约金(Legal Penalty)和约定违约金(Contractual Penalty)。Penalty(违约金)与Damages(损害赔偿金)的关系,如果合同中没有明确约定Liquidated Damages,那么,Penalty(Legal)通常就是1中的损害赔偿一种Unliquidated damages。

当约定了Liquidated Damages作为Penalty(contractual),则可能该违约金的金额可能大于受害方实际的损失,即1中的compensation。

例句:In circumstance provided above in Clause 14. 1 C New Company shall, at its sole option and discretion, be entitled to transfer to B all or part of C or New Company's proprietary rights and ownership of the infrastructure project, under construction or after Completion Date, as liquidated damages, in lieu of computing and compensating the actual damages provided that such transfer shall be conducted of C's own free will or rendered in the arbitration award as stipulated in clause 23. However, any transfer shall be subject to the confirmation and approval of the People's Insurance Company of China and the lending bank.

在第14.1c条规定的情形下,新公司有权自行决定向乙方转让丙方或新公司对在建或竣工日后基础建设工程的全部或部分的专属权利和所有权作为规定的违约金,代替计算赔偿实际的损害金,但条件是该等转让应按丙方的自由意志或第23条规定的仲裁裁决进行。然而,任何转让均应以中国人民保险公司和借款行的确认和批复为准。

法条链接:《中华人民共和国合同法》第一百一十四条 当事人可以约定一方违约时应当根据违约情况向对方支付一定数额的违约金,也可以约定因违约产生的损失赔偿额的计算方法。

约定的违约金低于造成的损失的,当事人可以请求人民法院或者仲裁机构予以增加;约定的违约金过分高于造成的损失的,当事人可以请求人民法院或者仲裁机构予以适当减少。

当事人就迟延履行约定违约金,违约方支付违约金后,还应当履行债务。

Article 114 The parties to a contract may agree that the party in breach shall pay damages of a certain amount in light of the breach circumstance, or may agree upon the calculating method of compensation for losses resulting from the breach of contract.

If the agreed amount for breach of contract damages are lower than the losses incurred, any party may petition the people's court or an arbitration institution to increase it; if it is excessively higher than the losses incurred, any party may petition the people's court or an arbitration institution to make an appropriate reduction.

If the parties to a contract agree upon the amount for breach of contract damages in respect to delay in performance, the party in breach shall perform the debt obligations after paying the breach of contract damages.

3. 补救措施(Remedial Measures)

当事人一方发生违约事实后,为防止损失的发生或扩大,而由违约方根据法律规定或合同约定而采取的瑕疵修补措施,在买卖合同、加工承揽合同中特别常见。

例句:Subject to special provisions explicitly of this Agreement thereunder, the other party shall be entitled to notify the party in default by registered letter; Unless satisfactory remedial measures are take within a period of two weeks, the party demanding remedy shall be entitled to claim compensation for losses and damages.

根据本协议项下明确的专门规定,本协议的另一方有权以挂号信的方式

通知违约方;除非在两周内采取符合要求的补救措施,要求补救的一方有权就其遭受的损失和损害提出索赔。

4. 继续履行(Continuing to Perform Obligations)

不论违约方是否已经承担赔偿损失或违约金的责任,都必须根据对方请求,在可能履行的情况下,继续履行合同。在英美法中,通常表述为 specific performance。

例句:The payment of any penalty by Party B according to 8. 6 shall not release the obligation of Party B to continue the delivery of the technical documentations.

根据本协议第 8 条第 6 款之规定,乙方违约金的支付不得解除其继续履行交付技术文件的义务。

5. 解除终止权(Right of Termination and Rescission)

对于违约方的违约行为,受害方在不愿或不能再继续维持合同关系的情况下,可通知对方解除或提前终止合同。具体可参见上节,这里不再论述。

第八节 争议解决条款(Dispute Resolution)

英文合同中关于争议解决,程式上一般先约定友好协商;协商不成,则根据仲裁条款或补充的仲裁协议进行仲裁;没有仲裁条款,争议发生后又没有补充的仲裁协议,才选择诉讼解决,双方可能会约定管辖法院,实体上也可能约定适用的法律。

法条链接:《中华人民共和国合同法》第一百二十八条 当事人可以通过和解或者调解解决合同争议。

当事人不愿和解、调解或者和解、调解不成的,可以根据仲裁协议向仲裁机构申请仲裁。涉外合同的当事人可以根据仲裁协议向中国仲裁机构或者其他仲裁机构申请仲裁。当事人没有订立仲裁协议或者仲裁协议无效的,可以向人民法院起诉。当事人应当履行发生法律效力的判决、仲裁裁决、调解书;拒不履行的,对方可以请求人民法院执行。

Article 128 The parties may resolve disputes relevant to the contract through settlement or conciliation.

The parties may, if unwilling to resolve their disputes through settlement or conciliation or failing in the settlement or conciliation, apply to an arbitration institution for arbitration according to their arbitration agreement. The parties to a contract involving foreign interests may, according to their arbitration agreement, apply for arbitration to a Chinese arbitration institution or other arbitration institutions. If there is no arbitration agreement between the parties or the arbitration agreement is null and void, they may bring a lawsuit before the people's court. The parties shall perform the court judgments, arbitration awards or settlement agreement which has become effective. In case any refusal in respect to the performance, the other party may petition the people's court for execution.

这里列举一些常见的关于争议解决的条款。

例一:Venue

The Borrower hereby irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relation to this Agreement or the Note brought in the courts of the State of California or the United States District Court for the Northern District of California and hereby further irrevocably waives any claim that any such suit, action or proceeding brought in any such court as been brought in an inconvenient forum.

管辖地

在法律允许的最大限度内,借款人特此不可撤销地放弃任何反对现在或以后对因本协议或票据产生或与本协议或本票据有关的起诉、诉讼或诉讼程式管辖地的设置在加州法院或美国加州北区地区法院,并进一步不可撤销地放弃任何异议如果以上诉讼在以上法院的不方便的法庭提起进行。

例二:Arbitration

All disputes in connection with this Contract or the execution thereof shall be settled through friendly negotiations.

In case no settlement can be reached through negotiations, the case should then be submitted for arbitration to China International Economic and Trade Arbitration Commission, Beijing, in accordance with its arbitration rules. The

arbitration so all take place in Beijing and the decision rendered by the said Commission shall be final and binding upon both parties; neither party shall seek recourse to a law court or other authorities for revising the decision. The arbitration fee shall be borne by the losing part.

仲裁

与本合同或其履行有关的所有争议应通过友好协商解决。

如果协商不成,该争议可提交到北京中国国际经济贸易仲裁委员会按该仲裁委员会的仲裁规则进行仲裁。仲裁在北京进行且该仲裁委员会的裁定应为终局性对双方均有约束力;任一方不得诉诸法院或其他机构更改该裁决。仲裁费应由败诉方承担。

例三:Dispute Resolution

20.1 Throughout the term of this Agreement representatives of the parties shall meet regularly at not less than semi-yearly intervals to discuss the progress of the Project and the operation of the infrastructure project in order to ensure that the arrangement between the parties hereto proceeds on a mutually satisfactory basis.

20.2 The parties hereto agree that in the event that there is any dispute or difference between them arising out of this Agreement or in the interpretation of any of the provisions hereof they shall endeavour to meet in an effort to resolve such dispute by discussion between them but failing such resolution the representatives of parties shall meet to resolve such dispute or difference and the joint decision by them shall be binding upon the parties hereto and in the event that a settlement of any such dispute or difference is not reached pursuant to this Clause then provisions of Clause 23 shall apply.

20.3 In the event any dispute should arise between the parties as to any technical matter in regard to the construction or operation of the infrastructure project, design and production standards shall be provided and the case shall forthwith be referred to the expert chosen by agreement of both parties. Subject to arbitration, as hereinafter provided, such decision shall be final and binding upon the parties. If the expert fails to render his decision within such ________ days or if either of the parties is dissatisfied with any such decision, the party may, within ________ days after the expiration of the first-named period of ________ days or after receiving notice of such decision, as the case may be, refer the dispute to arbitration as provided in Clause 23.

争议解决

第二十条第一款 贯穿本协议期间,为确保双方的安排在相互满意的基础上进行,双方代表应定期(不少于半年一次)讨论该工程进度以及基础设施工程的运作。

第二十条第二款 协议双方同意如果因本协议或其规定的解释产生争议或分歧,双方应努力会谈协商解决该争议,如果协商不成,双方代表应会谈解决该争议或分歧且双方共同决议应对协议双方均有约束力。如果根据本条无法解决该争议或分歧,则适用第二十三条的规定。

第二十条第三款 如果双方间争议涉及有关基础设施工程的建设或实施,设计及产品标准的技术问题,则应立即提交本协议双方选出的专家解决。根据下文规定的仲裁,该裁决应为终局性并对双方均有约束力。如果该专家未能在________天内作出裁决或任一方对其裁决不服,则该方可在首先提及的________天期间届满后________天内或收到其裁决的通知后,视具体情况而定,按照第二十三条规定将该争议提交仲裁。

例四:Governing Law

This Agreement, the Note and the right and the obligations of the parties hereunder and thereunder shall be governed by and construed in accordance with the laws of the State of California.

适用法律

本协议、本票据及双方在其项下的权利义务应适用加州法律并按加州法律解释。

例五:Jurisdiction

The Borrower hereby agrees that any legal action or proceeding with respect to this Agreement, the Note of the other documents contemplated hereby or referred to herein and any action or proceeding to execute or otherwise enforce any judgment obtained against if for breach thereof, may be instituted in the courts of the State of California or in the United States District Court for the Northern District of California or in any court in [Name of Country] or elsewhere, as the Bank may elect, and by execution and delivery of this Agreement the Borrower irrevocably and unconditionally submits to each such jurisdiction.

司法管辖

借款人特此同意任何有关本协议、其他预期或参考的单据票据的诉讼或诉讼程式以及任何因为违约所获判决的执行或其他强制执行的诉讼或诉讼程

式可在加州法院或美国地区法院加州北区法院或由本行指定的某国（国名）任一法院或其他地方进行。通过签署及交付该协议借款人不可撤销无条件接受以上每个司法管辖。

第九节 不可抗力条款（Force Majeure）

英文合同中的不可抗力条款是指对于发生不可抗力事件导致合同一方不能履行合同义务，则在所证明的不可抗力事件影响的范围内，该方可免除部分或全部合同责任。

法条链接：《中华人民共和国合同法》第一百一十七条 因不可抗力不能履行合同的，根据不可抗力的影响，部分或者全部免除责任，但法律另有规定的除外。当事人迟延履行后发生不可抗力的，不能免除责任。

本法所称不可抗力，是指不能预见、不能避免并不能克服的客观情况。

Article 117 In case that a contract is not able to be performed because of force majeure, the liabilities shall be exempted in part or wholly in light of the effects of force majeure, except as otherwise stipulated by law. If the force majeure occurs after one party has delayed his performance, the liability may not be exempted.

Force majeure as referred to in this Law means the objective circumstances that are unforeseeable, unavoidable and insurmountable.

《中华人民共和国合同法》第一百一十八条 当事人一方因不可抗力不能履行合同的，应当及时通知对方，以减轻可能给对方造成的损失，并应当在合理期限内提供证明。

Article 118 One party to a contract that is not able to perform the contract because of force majeure shall give a notice to the other party in time so as to reduce the probable losses to the other party and provide evidence within a reasonable time limit.

《联合国国际货物销售合同公约》有关内容：A party is not liable for a failure to perform any of his obligations if he proves that the failure was due to an impediment beyond his control and that he could not reasonably be expected to have taken the impediment into account at the time of the conclusion of the contract or to have avoided or overcome it or its consequences.（如果当事人一方能证明，其不履行合同义务是由于某种非他所能控制的障碍，而且对于这种障碍，在订立合同时无法合理预期能考虑到或能避免或克服它或它的后果，则该当事人不负责任。）

例一：Force Majeure

12.1 Force majeure shall refer to war, flood, fire, typhoon, earthquake and other accidents that both parties mutually agree as force majeure.

12.2 In case of force majeure, the affected party shall notify by telex or cable the other party of the accident as soon as possible and send by registered airmail to the other party the evidence issued by the local government within 14 days from the accident.

12.3 If the implementation is affected by force majeure and the accident lasts for more than 20 days, both parties shall hold friendly discussions as soon as possible with regard to the further implementation of the contract.

不可抗力

第十二条第一款　不可抗力系指战争、洪水、火灾、飓风、地震及其他双方同意的事件。

第十二条第二款　如果发生不可抗力，受影响的一方应以电传或电报尽快通知对方该事件并在该事件发生后14天内以航空挂号信形式寄送当地政府出具的该事件的有关证明。

第十二条第三款　如因不可抗力合同履行遭受影响且该不可抗力事件持续超过20天，则双方应就合同的进一步履行进行友好协商。

例二：Force Majeure

Neither the Seller or the Buyer shall be held responsible for late delivery or non-delivery owing to generally recognized "Force Majeure" causes. However in such a case, the Seller shall immediately advise by cable or telex the Buyer of the accident and airmail to the Buyer within 15 days after the accident, a certificate of the accident issued by the competent government authority or the chamber of commerce which is located at the place where the accident occurs as evidence thereof. If the said "Force Majeure" cause lasts over 60 days, the Buyer shall have the right to cancel the whole or the undelivered part of the order for the goods as stipulated in Contract.

不可抗力

因公认的不可抗力事件致使迟延交付或交付不能，无论买方还是卖方概不承担责任。然而，在该情况下，卖方应立即以电报或电传的方式通知买方该不可抗力事件，并在该事件发生15天内以航空邮件方式送达由该事件发生的当地有权政府部门或商会出具的该事件的证明书以资证明。如果上述不可抗力事件持续超过60天，则买方应有权撤销整个合同或本合同规定货物订单未

交付部分。

第十节 杂项条款(Miscellaneous)

除了以上介绍的一般条款外,往往在英文合同的最后还有一个杂项条款(Miscellaneous),也称为其他条款,把一些较为简单的条款汇合在一起。常见的有语言(Language)、可分离性/效力瑕疵(Severability)、标题效力(Headings/Captions)、通知(Notice)、弃权(Waiver/Disclaimer)等。

- Language

All notices, demands, requests, statements or other communications to be made or given by the Borrower hereunder shall be in the English language. Any documents other than financial statements required to be delivered pursuant to this Agreement which are not in the English language must be accompanied by a certified English translation thereof and in the event of any conflict between the original of the document and the English language translation thereof, the English language translation shall for all purposes be deemed to be the correct and controlling version.

语言

本协议项下所有借款人发出或接受的通知、要求、请求、声明或其他通信均应以英语书就。除财务报表外任何根据本协议需要交付的文件如果不是以英语书就,则必须附有该文件的经认可的英文译文。如果文本原件和英文译文不一致,则以英文译文为准。

- Headings, etc.

The headings of the various sections and subsections hereof are for convenience of reference only, do not constitute a part hereof and shall not affect the nearing or construction of any provision hereof.

标题等

本协议不同条款的标题仅供查阅方便,不得构成本协议的一部分也不得影响其临近条款或该条款规定的解释。

- Severability

Each section, part, term, and provision of this agreement shall be

considered severable. If, for any reason, any section, part, term, or provision of this agreement is determined to be invalid and contrary to, or in conflict with, any existing or future law or regulation of a court or agency having valid jurisdiction, such determination shall not impair the operation or affect the remaining portions, sections, parts, terms, or provisions of this agreement, and the latter will continue to be given full force and effect and bind the parties to this agreement. The invalid section, part, term, or provision shall be deemed not to be a part of this agreement.

可分离性

本协议每章、节、条、款应被认为是可分离的。如出于某种原因,本协议任一章、节、条、款被认定为无效或与有管辖权法院或机构的现行或将来的法律法规发生矛盾或冲突,则该裁决不得损害或影响本协议其余部分、章、节、条、款的适用,且后者继续完全有效对本协议双方均有约束力。无效的章、节、条、款应视为不再是本协议的一部分。

- Notice

All notices required or permitted by this agreement shall be in writing and shall be deemed sufficient where sent by certified mail to the receiving party at the address set forth above or at such other address as that party may have designated in writing.

通知

本协议所要求或允许的通知应为书面方式且应视为按上文规定的地址或其他该方书面指定的其他地址以保证邮件充分送达到收件方。

- No Waiver

No waiver of any term, provision or condition of this Agreement, the breach or default thereof, shall be deemed to be either a continuing waiver or a waiver of a subsequent breach or default of any such term, provision or condition of this Agreement.

不弃权

对本协议任何条款,无论对条件的放弃、或对其违约或不履行的放弃,不得视为持续性放弃,也不视为对本协议任何违约条款、规定或条件后续违约或不履行的放弃。



第五章　英文合同特殊条款 Special Clauses

Dig a well before you are thirsty.

(*Chinese Proverb*)

未雨绸缪。

(中国谚语)



本章所介绍的英文合同特殊条款,是指因为合同种类和性质千差万别,个别种类的英文合同常见的条款。本章仅就劳动合同、买卖合同、服务协议、技术转让等合同中常见的保密条款(Confidentiality),国际货物买卖合同、补偿贸易合同等合同中常见的保险条款(Insurance),劳动合同、代理合同、销售协议、服务协议等合同中常见的竞业禁止条款(Non-competition),服务协议、代理协议等合同中常见的不形成劳动关系条款(No Constitution of Employment),以及买卖合同中常见的所有权和风险转移条款(Risk of Loss and Title)做简单介绍。

第一节　保密条款(Confidentiality)

基于商业秘密的保护,英文合同中往往特别注重保密条款的规定。广义上讲包含两方面的内容:不泄露(to keep the disclosed information confidential)和不滥用(not to use the disclosed information other than in connection with the agreement)。

例一:Confidentiality

The CVC acknowledges and agrees that the Technology it will receive from Party B during the term of this Contract shall be kept secret and confidential.

The CVC agrees that it and all of its employees and personnel shall use the Technology only for the purposes specified in this Contract and shall not disclose in anyway whatsoever any of the Technology to any third Party or Parties without the prior written consent of Party B. Such confidentiality shall be maintained during the terms of this Contract and for a period of ________ years after the termination of this contract.

保密条款

CVC公司承认并同意在本合同期间对将从乙方收到的技术应予保密。

CVC同意其与所有员工和人员仅为本合同规定之用途使用技术,未经乙方事先书面同意,不会以任何方式向任何第三方披露任一技术。该贸易义务在本合同期间以及本合同终止后________年继续有效。

例二:Confidentiality

1) China Corporation and the Personnel shall keep confidential to any third party all documents and information related to the Works during the execution of

this CONTRACT.

2) The Employer and its staff shall keep confidential to any third party all documents and price of manpower supplied by China Corporation as stipulated in this CONTRACT during the execution of this CONTRACT.

保密条款

1)中方公司及其员工在本合同履行期间对有关该工程的文件和资料应对任一第三方保守秘密。

2)业主及其职员根据本合同规定在本合同履行期间应对中方公司提供人力资源支持的所有文件和价格向任何第三方保守秘密。

第二节 保险条款(Insurance)

现代商业社会,保险无处不在,英文合同也经常使用,国际贸易合同尤其常见。

例一:Insurance

To be covered by Party A for 110% of the invoice value, covering W. A. and War Risk.

保险

由甲方按发票价格的110%投保共同海损险和战争险。

例二:Insurance

Covering All Risks for 110% of the invoice value as per Insurance: Policy of People's Insurance Company of China (P. I. C. C.) to be affected by the Buyer.

保险

按本保险单以发票价格的110%投保一切险,中国人民保险公司(P. I. C. C.)保单。

第三节 竞业禁止条款(Non-competition)

一般而言,竞业禁止条款(Non-competition)分为两种类型:其一为使因合同而取得特定地位的当事人不能危及他方当事人的特殊地位。如劳动合同、聘用协议中的有关条款。其二为使因合同丧失特定地位的当事人不能再从事威胁因合同取得其地位者的活动。如公司转让合同。

例句:NONCOMPETITION PROVISION

In further consideration of employment, the Employee shall not engage in a business in any manner similar to, or in competition with, the Company's or the Company's affiliated businesses during the term of his or her employment. Furthermore, the Employee shall not engage in a business in any manner similar to or in competition with the Company's business for a period of ________ years from the date of termination of his or her employment with the Company in the geographical area within a ________ mile radius of any present or future office opened by the Company during the term of employment and the geographical area within a ________ mile radius of the Employee's home address.

竞业禁止规定

进一步考虑聘用关系,在其聘用期间,受聘方不得从事任何与本公司或其关联企业近似或竞争的业务。此外,在本聘用协议终止后________年内在本公司现有或将来开立的营业场所方圆________英里范围内或本聘用协议期间在受聘方家庭住址方圆________英里范围内,受聘方不得以任何方式从事类似或与本公司业务竞争的业务活动。

第四节 不形成聘用等关系条款 (No Constitution of Employment, etc.)

在英文合同中,有时会在服务协议、代理协议等合同协议中作出特别的约定,声明所形成的合同关系不得理解为聘用等关系,即不得适用劳动法等其他法律有关的规定。

例一:Both parties agree that sales representative is an independent contractor and not an employee of the broker.

双方同意销售代表为独立缔约人并非中介人的雇员。

例二:Franchisee As Independent Contractor

14. 1 This agreement does not constitute Franchisee an agent, legal representative, joint venturer, partner, or employee of Franchiser for any purpose.

14. 2 Franchisee shall be an independent contractor and is in no way authorized to make a contract, agreement, warranty, or representation on behalf of Franchiser or to create any obligation, express or implied, on behalf of Franchiser.

14. 3 The parties agree that this agreement does not create a fiduciary relationship between Franchiser and Franchisee.

被特许方作为独立缔约人

第十四条第一款　本协议概不形成被特许方为特许方代理商、法定代表人、合资人、合伙人、雇员关系。

第十四条第二款　被特许方应为独立缔约人绝无授权代表特许方签订合同、协议、保证或声明或代表特许方明示或默示创设任何义务。

第十四条第三款　双方同意本协议在特许方和被特许方并不创设信托关系。

第五节　所有权和风险条款(Risk of Loss and Title)

所有权和风险的转移对于许多英文合同尤其是国际货物买卖合同至关重要。

例一:Retention of title

If the parties have validly agreed on retention of title, the goods shall remain the property of the Seller until the complete payment of the price, or as otherwise agreed.

所有权保留

如果双方确实同意对所有权保留,则在完成货款支付前该货物的所有权仍归卖方,或另有规定。

例二:Seller hereby assumes all risk of loss, damage or destruction resulting from fire or other casualty to the time of transfer of assets and Closing.

卖方由此承担财产转移和成交前因火灾或其他事故所引起的灭失、毁损的所有风险。

第六节　知识产权条款(Intellectual Property)

对于产品开发、技术许可等合同,通常都会有知识产权方面的专门条款。

例如:

INTELLECTUAL PROPERTY

知识产权

4.1 Vendor to obtain all necessary rights

供应商应获得所有必要的权利

Vendor must at its own cost ensure that it has all necessary rights and licenses to intellectual property subsisting in any matter, thing or process (including but not limited to, hardware and software) used or to be used by it in providing Services to ×××, or delivered or to be delivered by it to ×××, under this Agreement.

供应商必须自行承担费用确保其拥有根据本协议在向×××提供服务中现在使用或将要使用的或者现在或将来交付给×××的任何物质、物品、或者工艺(包括但不限于硬件和软件)中所含有的全部的必要的知识产权的权利以及使用许可。

4.2 Ownership of Intellectual Property

知识产权的所有权

Unless otherwise agreed in Schedule 1, ××× owns all intellectual property:

a) in and to all deliverables; or

b) arising out of the provision of the Services,

and to the extent any such intellectual property is owned by Vendor, Vendor assigns all such intellectual property to ×××.

除非附件1另有协议,×××拥有全部的知识产权:

1) 所有可交付物附带的;或者

2) 因提供该服务所产生的,

以及知识产权属于供应商的,供应商转让所有该等知识产权给×××。

4.3 Intellectual Property Indemnity

知识产权赔偿

Vendor indemnifies ×××, including its representatives, against all liability, loss, damage, cost and expense (including court and legal costs on a solicitor and own client basis) which may be incurred by any

of them arising out of or in connection with any claim, action or proceedings by a person alleging that the Services or any deliverable infringes the intellectual property of that third party, except to the extent that such infringement is due to the use of material provided by ×××.

供应商保证赔偿×××包括×××的代表,因他人主张服务或者任何可交付物侵犯第三方知识产权而提起的索赔、诉讼或者诉讼程序所产生的或者与之相关的所遭受的所有责任、损失、损害、花费和费用(包括但不限于诉讼费用以及他们自己委托人和律师的费用),除非该等侵权系由于使用了×××所提供的材料所致。





实践篇

PRACTICE



第六章　英文合同导读范例 Model Contract for Reading Guidance

The golden rule is that there are no golden rules.

(G. B. Shaw, Man and Superman)

黄金规则就是没有黄金规则。

(G. B. 肖,《人与超人》)



从主料、辅料、作料这些用料的各个方面层层揭开英文合同的神秘面纱后,摆在我们面前的俨然就是一道令人垂涎欲滴,色香味俱佳的绝美西餐。各位看官大概也禁不住跃跃欲试,想要品味一下吧。那么如何品味英文合同这道西餐呢?下面在给出样菜(导读范例)前,我们来简单介绍一下品味的方法,也就是阅读英文合同的一些基本技巧,当然,Practice makes Perfect,要想充分领略个中滋味,还需多多品尝,这样才能深得其味,成为美食家。

解读合同时有以下几个"诀窍":

首先,主次分明,各个击破。也就是说,英文合同的本文部分(主菜)和附件部分(配菜)要分清主次,然后再各个击破,搞清该合同的主旨。

其次,一般特殊,分类解读。就是要将英文合同中的一般条款、特殊条款分别对待,尤其是特殊条款往往因合同性质、种类、标的而千差万别,需要在阅读时给予足够重视。

最后,切忌望文生义。英文合同,除了法律语言外可能还会涉及其他专业领域的行话、术语(Jargon),所以有些时候就切莫望文生义,而必须请教有关领域的专业人士答疑解惑了。

此外,法律和英语一个都不能少,作为法律英语的应用,基础英语和有关法律知识方面的掌握自然少不了。否则,就如读天书,一窍不通了。

下面就带领大家一起来分析解读一下若干英文合同的范例,范例一是一个常见的经销协议,为方便理解,提供了参考译文。范例二是一个股权转让协议,范例三为一个软件许可协议。范例二和范例三,没有提供参考译文,只提供了概要的评论和分析,考验一下读者的阅读理解纯粹原版英文合同的能力。

第一节 范例一:经销协议(Distribution Agreement)

DISTRIBUTION AGREEMENT
经 销 协 议

THIS DISTRIBUTION AGREEMENT (the "Agreement") is made on this day of 200 ____, between ABC INC., a Florida Corporation (the

"Company") located at ×××, Florida 32114 and ________ (the "Distributor") located at ________, Beijing.

本经销协议（以下简称"协议"），系由 ABC 公司，位于佛罗里达州某地的公司（以下简称本公司）与________（以下简称"经销商"）位于北京某地的公司于 200____年____月____日签订。

合同名称、合同当事双方及签约日期，为下文引用方便，直接在各方的全称后括弧内标注其简称，说明其在合同中的地位。

WITNESSETH

兹证明（可忽略不翻译）

WHEREAS, the Company is the exclusive worldwide distributor of cosmetic and skin-care products (collectively the "BBB Product" or "Products") manufactured by BBB INTERNATIONAL, INC. a Florida Corporation; and

鉴于本公司是 BBB 化妆品的全球独家的经销商，所代理的护肤品均由佛罗里达 BBB 国际公司制造（以下称"BBB 产品"或"产品"）。

WHEREAS, the Company desires to increase the public's consumption of the BBB Products specified herein within the geographic area described in Exhibit A (the "Territory"); and

鉴于本公司希望经销商在附件 1 所规定的地理区域内（以下简称"本区域"）提高公众对本合同项下 BBB 产品的消费额度。

WHEREAS, the Distributor desires to secure the right to market the aforementioned Products in the Territory and such additional territories as may be agreed upon in writing between the Company and Distributor.

鉴于经销商希望能得到授权在该区域及与本公司以书面方式协商一致的另外区域对上述产品进行销售。（鉴于条款，说明当事人签约的原由属一般性条款）

NOW, THEREFORE, in consideration of the premises and the mutual promises set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:
由此,考虑到双方以上共识和本协议达成的相互承诺及其他对价,双方在此充分接受达成一致,协议如下:

介绍合同背景情况,按英美法传统说明当事人基于对价(valuable consideration)达成合意,约定如下,引出正文条款。

ARTICLE I
第一条
APPOINTMENT TO SELL AND DISTRIBUTE
委任销售与分销

Section 1.1 APPOINTMENTS. The Company agrees to sell and the Distributor agrees to buy Products on the terms and conditions contained in this Agreement. The Distributor agrees to sell, distribute and promote the sale of Products throughout the Territory on the terms and conditions contained in this agreement.
第一条第一款 委任。按本协议条款规定本公司同意售卖,经销商同意购买该产品。经销商同意根据本协议项下条款在本区域出售、分销、促销本产品。

Section 1.2 TERRITORY. Except as provided in Section 11.4 hereunder, the Company agrees not to deliver the Products to any person other than Distributor within the portion of the Territory, provided, however, that the Company shall have the right to ocean-going vessels and to ship Products through or deliver Products within the Exclusive Territory if it knows or reasonably believes that substantially all of such Products are to

be reshipped for eventual delivery outside the Territory. Without the prior written consent of the Company, which in the Company's sole and absolute discretion may be withheld, Distributor hereby covenants and agrees that it shall not: (i) sell, ship or deliver the Products to or in any place or geographic area located outside the Territory; or (ii) sell Products to any purchaser if Distributor knows or has reason to believe that more than 20% of such Products will eventually be sold through retail outlets located outside the Territory. In the event that sales of Products are made by a distributor in another area and a substantial portion of such Products are shipped by customers of such Distributor into the Territory, or in the event sales of Products are made within the Territory by Distributor and a substantial portion of such Products are shipped by customers into an area outside the Territory in which another distributor has sales rights, (whether or not such shipments take place as the result of a breach hereof), then the Company shall have the right in its discretion (in addition to any other rights and remedies) to make an equitable apportionment of the adjusted gross profits from such sales between the Distributor and any other distributors of the Products purchasing directly from the Company involved in such dispute. Any such apportionment in adjusted gross profits may be determined by the Company acting in its sole discretion exercised in good faith, taking into account such factors as sales effort and expenses in securing the customer's business, the level of advertising and promotion by the distributor into whose territory the Products are shipped, and the likelihood that the cross-shipments have reduced sales which otherwise would have been made in the territory into which the goods have been shipped. Adjusted gross profits, as used herein, shall mean sales prices, less (I) cost of goods sold, (ii) direct freight, and (iii) direct selling cost.

第一条第二款　区域划分。除本协议第 11.4 规定外，本公司对经销商所签订的区域实行区域内销售保护，不能在区域内将产品提供给其他人，但如果本公司知道或者有理由确信，实际上这些产品将最终转运到保护区域外地区，则有权在本保护区域运送本产品。未经本公司的书面同意，本公司有权随时收回该同意，经销商承诺保证同意不得有如下行为：(1)不在/到任何非经销商区域内进行销售、装运、交付本产品；(2)经销商知道或应当知道，20%以上的本产品将最终通过区域外的零售店销售出去，则不得出售给该买方。如果，另一个区域的经销商窜货到本区域或该经销商客户大部分货物窜货到本区域以及本区域内经销商窜货或其客户窜货到别的区域，(无论装运是否构成违约的后果)，本公司有权(除了任何其他权利和救济)，在直接从本公司购买产品的涉及纠纷的经销商之间调整毛利作出公平分配以避免矛盾。本公司将根据诚实信用的原则独自裁量，考虑经销商的销售业绩、业务花费、广告促销水准以及因为窜货而引起的销售额减少程度等因素来调整这一合理的区域利润分配。调整毛利润意味着调整销售价格，减少(1)销售成本，(2)直接运费，(3) 直接销售费用。

委任销售、经销所在区域和许可权等内容是该类协议的特殊条款。

CORPORATE ACCOUNTS
BBB 公司账户：

BBB has *no* interest in supplying accounts in Distributor's respective territory and will strongly discourage accounts from electing to be supplied directly thru BBB corporate. However, in some rare instances, an existing or new account may elect to be supplied directly by BBB corporate, i. e., an international hotel chain or spa chain. In these rare instances, Distributor would be *immediately notified* by corporate of *any such* activity in their respective territory. In this case, Distributor would then be awarded a 20% commission on all sales generated from BBB retail and professional products on placed orders from said BBB corporate account.

In exchange for this commission, Distributor would be required to train, educate and support said account. However, BBB corporate would be solely responsible for advertising and co-op advertising incentives, Spa menu design package and event sampling opportunities, etc.
BBB 公司不会给经销商在各自经销区域提供账户,并强烈反对直接提供通过 BBB 公司选用账户。然而,在一些特殊情况下,BBB 公司也可直接提供账户,如国际宾馆或者水疗连锁。在这些特殊情况下,公司会立刻告知各自区域的经销商该活动。在这种情况下,经销商会获得来自从 BBB 公司在该账户所产生的 BBB 零售和专业产品销售额 20% 的提成。作为提成的交换,经销商需要培训、训练和支持该账户。但 BBB 公司会独自负责进行广告运作和合作广告激励、Spa 项目设计包装和事件抽样机会等。
In the event Distributor elects to refrain from training, educating and supporting said corporate account, Distributor would be awarded a monthly commission of 5% on all sales generated from BBB retail and professional products on placed orders.
如果经销商不愿意对该账户进行培训、训练以及支持的话,那么经销商可以每月从总的销售 BBB 产品的成交订单销售额中得到 5% 的提成。

这一段说明会计账户。

Section 1.3 OCEAN-GOING VESSELS. Distributor shall not sell Products to ocean-going vessels unless approved in writing from the Company.
第一条第三款 海运出口。经销商未经本公司书面许可的不得将产品出口。

Section 1.4 Conflicts of Interest. Distributor hereby covenants and agrees that during the initial term and any renewal term hereof neither Distributor nor any Related Person (as hereinafter defined) shall, either directly or indirectly, distribute or sell within the Territory any products

or goods not manufactured or sold by the Company which are or may be in competition with the Products, including (without limitation) skin care products. (The term "Related Person" shall mean: (i) any person who directly or indirectly owns any beneficial interest in or in any manner controls any of the stock of Distributor; (ii) any member of Distributor's or any such stockholder's immediate family; and (iii) any person, partnership, corporation or other entity which any of the foregoing individually or collectively control or in which any of the foregoing have any direct or indirect ownership or financial interest.)

第一条第四款 利益冲突。经销商特立约同意在初始期间和其后任何续约期间,经销商和任何关联人员(下文中定义的)不得直接或间接在区域内分销或者销售任何不是本公司制造或者销售的或可能产生竞争的产品,包括(但不限于)护肤品。[术语"关联人员"指:(1)任何直接或者间接享有经销商权益或以任何方式拥有经销商股份的人;(2)经销商股东或者任何经销商股东的直系亲属;(3)任何上述独自或共同控制或直接间接拥有所有权或者财产利益的自然人、合伙、公司或者其他实体。]

利益冲突,也就是竞业禁止的约定。

Section 1.5 REMEDIES. Distributor specifically acknowledges that any breach of any of its covenants contained in this Section I may cause irreparable harm to the Company and that damages are not an adequate remedy. Distributor therefore agrees that the Company shall be entitled to injunctive or equitable relief to enforce such covenants. (The foregoing shall not be construed to limit in any way the Company's right to enforce such covenants in any manner or the Company's rights to injunctive or equitable relief with respect to any other terms of this Agreement.)

第一条第五款　救济。经销商明确承认任何违背本条规定的契约的行为可能给本公司带来不可弥补的损害且损害赔偿金不足以救济。因此,经销商同意本公司有权申请禁止令或衡平救济来强制履行该契约。(以上所述并不得解释为以任何方式限制本公司就本协议其他条款用任何手段来强制履行该契约或申请禁止令或衡平救济的权利。)

违约救济的约定,注意普通法救济、衡平法救济的双重救济模式。

Section 1. 6 INVALIDITY OF COVENANTS. In the event that any covenant of Distributor set forth in this Section Ⅰ is determined by a court of competent jurisdiction to be unenforceable for any reason, the Distributor hereby agrees to be bound by such lesser restrictions as such court determines are enforceable.

第一条第六款　契约无效。如本协议第一条规定的任何约定由有管辖权的法院因某种原因裁定无法执行,则经销商在此同意按该法院裁定可执行的较小限制而受约束。

这是契约效力的一般性约定。

Section 1.7 BOND. In any action or proceeding by Company to obtain a temporary restraining order and/or preliminary injunction to enforce these covenant(s), Distributor hereby agrees to waive the necessity of the posting of any injunction bond by Company in order to obtain the temporary restraining order and/or preliminary injunction. In the event that Company's request for a temporary restraining order and/or motion for preliminary injunction is granted in whole or in part but Company is ultimately unsuccessful in obtaining a permanent injunction to enforce any of these covenant(s), Distributor hereby waives any and all rights it

may have against Company for any injuries or damages, including consequential damages, sustained by Distributor and arising directly or indirectly from the issuance of the temporary restraining order and/or preliminary injunction.

第一条第七款 担保金。在公司为获得临时限制令和/或初步禁止令以强制执行这些契约的任何诉讼或法律程序中,经销商兹此同意放弃要求公司提供禁令担保金以获得临时限制令和/或初步禁止令。倘若公司临时限制令的要求和/或初步禁止令的动议完全或部分获准,但最终公司未能获得永久禁止令来强制执行这些契约,经销商兹此放弃因发布临时限制令和/或初步禁止令直接或间接导致其遭受的任何损害或损失,包括继发的损害赔偿,而对公司可能拥有的任一和全部权利。

这一段约定经销商保证对临时限制令和/或初步禁止令造成损害赔偿的权利放弃。

ARTICLE Ⅱ
第二条
TERM
协议期间

Section 2.1 DURATION OF AGREEMENT. Unless this Agreement is earlier terminated as provided herein, this Agreement shall be for an initial term beginning on the date hereof and ending ________, 200 ____. This Agreement shall be renewed for successive one-year terms thereafter unless either party gives written notice of non-renewal at least 30 days prior to the end of the initial term or any renewal then in effect.

第二条第一款 协议期间。除非根据本协议项下规定本协议提前终止,本协议初始期间将从签订日期开始生效至________,200 ____年终止。如任一方未以书面方式在初始期间届满前至少30天通知不再续约,则本协议续展至其后的下一年期间,该续展即时生效。

协议期间的约定包括续约的条件。

ARTICLE Ⅲ
第三条
PRODUCTS AND PRICES
产品和价格

Section 3. 1 PRODUCTS. The term "Products" shall include only those products of the Company listed in Exhibit "B". The Company may, upon fifteen (15) days written notice to the Distributor, cease selling any or all of the Products to Distributor without any liability to Company, provided that the Company does not sell any of such Products to another person or legal entity within the Territory during the term hereof, and that the discontinuance is undertaken in good faith for bona fide business reasons. The Company may add Products to Exhibit "B" from time to time upon such terms and conditions as it deems appropriate.
第三条第一款　产品。本协议中用语"产品"只包括本公司在附件2中所列出的产品。本公司可以提前15天书面通知经销商,停止销售任一或者全部产品而不承担任何责任,但本公司不得在本协议期间销售任何该产品给本区域中的其他自然人或者法律实体且该中断是按诚实信用原则基于善意的商业理由。本公司可以在适当时机,根据该条款随时增加产品到附件2。

Section 3. 2 PRICES. Company shall strive to maintain reasonable price levels of Products, which shall be determined and established at its sole discretion, taking into consideration such factors as competition and market conditions in Territory as well as the nature and extent of the sales promotion support that Distributor and Company shall each provide. Company shall notify Distributor of any changes in price thirty (30) days in advance of any price changes.
第三条第二款　价格。本公司应考虑诸如本区域竞争因素、市场情况以及经销商和本公司所提供的促销支援的性质和程度,独自裁量确定价格并且努力维持该产品的合理价格水准。遇有价格变化,本公司应提前30天告知经销商。

Section 3. 3 MARKETING AND ADVERTISING MATERIAL. Distributor shall abide by all corporate policies and procedures directly relating to trademarks, product/packaging color guidelines, and image, marketing and advertising materials as defined by the latest revision of Corporate Policies & Procedures Booklet.
第三条第三款 市场行销和广告宣传材料。经销商应遵守所有最新版的公司制度规程手册中所定义的与商标、产品包装颜色说明、图像、行销广告品有关的公司制度和规程。

Distributor shall pay Company for all marketing and advertising material which the Distributor desires subsequent to the marketing and advertising material furnished Distributor with its initial order. Company will sell marketing and advertising material to distributor at Company's cost. Distributor shall also pay all shipping charges and a reasonable handling charge for the marketing and advertising material. All translations and printed material in foreign languages are at the sole expense of the Distributor. All "brand-related" design, set-up time and artwork submitted to Company's graphic department shall be reasonably requested and provided free of charge as follows: proofs provided in PDF format, final artwork provided on CD final art format. Should distributor or distributor's media sources require final films/matchprints said material will be provided to distributor at Company "Cost" only after distributor approves/signs Job Quote and return to Marketing Department.
经销商应支付供给经销商最初订单产品所有市场行销和广告材料的费用以为随后所需,公司将以成本价供给经销商。经销商也应支付该材料所有的运费和合理的装卸费用。所有资料的翻译以及翻译后的印刷的费用由经销商独自承担。
所有提交到本公司策划部与"商标相关的"设计、安装时间、图案,可在以下情形下合理要求免费提供。经销商在以下合理的情况下可以申请免费提供和使用:以 PDF 文件格式提供的文样,以 CD 格式提供的最终图案。倘若经销商或者经销商委托的媒体需要原版胶片的,当经销商同意/签收报价并返还给本公司销售部以后,则按照本公司成本价格提供。

Section 3.4 ORDERS. Company shall fill and ship each order of the Distributor within sixty (60) days of receipt of such order, but shall not be liable in any respect for failure to ship or for delays in shipment where such failure or delay shall have been due wholly or in part to fire, strike, differences with workmen, failure to secure materials or energy sources from usual supply outlets, any governmental regulations, orders or controls, or to any cause beyond its control. Any portion of an order remaining unshipped after such sixty (60) days may be cancelled by Distributor upon written notice to Company.

第三条第四款 订单。本公司应在收到订单后的六十（60）天内海运发货，但是本公司对全部或部分因火灾、罢工、劳工争议、未能从通常的供应管道获得原料或能源、政府法令或管制或任何无法控制的原因导致不能装运或延迟装运概不负责。订单上的任何部分在发出订单六十（60）天之后还不能发货的，经销商可以书面通知本公司予以取消。

Section 3.5 SHIPMENT. Company agrees to ship the Product to Distributor or to any individual or entity that Distributor so directs EXWorks. The cost of such shipment and any charges for demurrage, storage, or otherwise after the arrival of the Product at its destination shall be borne by Distributor. If diversions of shipments are made upon the Distributor's request, or are made by Company as a result of the Distributor's failure or refusal for any reason to accept shipments made pursuant to the Distributor's orders, the Distributor shall pay the additional charges and expenses incident to such diversions, but in no event shall the Distributor pay Company an amount in excess of the charges or expenses incident to returning such shipments to their original shipping points.

第三条第五款 运输。本公司同意将产品装船运送给经销商或经销商按工厂交货方式指定的任何个人或实体。运输费以及任何由此而发生的延滞费、仓储费或者其他的产品抵达目的地后需要支付的其他费用由经销商承担。如果经销商要求变更卸货地，或者是经销商的基于某种原因不收或拒收订单货物，则经销商应支付由此而发生的附

加费用和因变更产生的费用,但是经销商概不承担超过运输费用或者返程费用以外的部分。公司有义务协助经销商选择安全快速节约的运输方式。

产品、价格、行销、广告、订单及装运的约定。

ARTICLE Ⅳ
第四条
PERFORMANCE
协议履行

Section 4. 1 BEST EFFORTS. Distributor shall use its best efforts to promote and sell the Products throughout the Territory. Such promotion shall include Distributor's attendance at those trade shows listed on Exhibit "C" attached hereto. Distributor is required to advertise Company's products in local trade publications and regional consumer publications a minimum of six times per year commencing no later than six months after official Product Launch date.
第四条第一款　竭尽全力。经销商应该竭尽全力在本区域促销销售该产品。该促销应包括经销商参加本协议附件三所列明的那些展会。经销商必须在该产品正式投放日6个月内以不低于每年6次的频率在与当地的商业出版物和地方消费者出版物发布本公司的产品广告。

Company shall provide use of Company's International Educator one time per year, provided Distributor is in full compliance with all terms and conditions of this contract. Company shall provide trainer and pay for airline travel. Company shall pay for three (3) training days at the rate of USD 225.00 per day. Distributor shall pay for any additional training days at the rate of USD 225.00 per day, payable in advance upon confirmed travel itinerary, prior to scheduled training. Distributor shall

pay for trainer's room and board at a minimum "3 – Star" hotel as defined in the current Michelin hotel rating manual, and safe transport to and from the airport and daily training site.
如经销商完全遵守合同条款,本公司应每年委派一次公司的全球性讲师来培训。公司将提供导师并支付交通费用,并以每天225.00美元支付3天的培训费用。经销商需要支付每天225.00美元以外的其他费用。经销商必须在预定培训前,确定旅程路线后提前支付。经销商应承担讲师的食宿费,至少是Michelin酒店星级手册定义的三星级以上酒店,以及酒店和机场间以及酒店和培训地间日常安全接送。

Section 4.2 INSPECTION AND REPORTING. Distributor shall permit Company and its representatives at any reasonable time to inspect Distributor's inventory of Products, and to inspect, audit and make copies of and extracts from all books, records, accounting information and all other papers in the possession of Distributor which relate in any way to this Distribution Agreement. Within ten (10) days after the end of each calendar month, Distributor shall furnish Company with written reports certified as true and correct by Distributor and by Distributor's president individually in such form as Company may specify (or in the absence of such specification in any reasonable form) containing the following information with respect to the preceding month:
第四条第二款 检查和报告。经销商应允许本公司及其代表在任何合理的时间检查经销商销售该产品的明细目录并检查、审计和复制或节录各种账簿、记录、核算资料,以及其他一切与以任何方式与本经销协议经销商所占有的其他文件。在每个日历月结束后10天内,经销商都要向本公司提供由经销商及其董事长个人证实真实正确的书面报告,该报告应按本公司要求的格式(如果没有以合理的格式提供说明),应包括有关上个月的以下几个方面情况的内容:
(a) beginning and ending inventory of products on hand, itemized by Product line and item;
(b) sale of products during the month and for the year to date;
(c) month-end balance of cash on hand;

(d) month-end report of accounts receivable to include an aged schedule of accounts receivable, specifically identifying any account receivable which may be of doubtful collectability;
(e) a complete monthly listing of each and every sales representative of Distributor, clearly indicating the Territory, or part thereof, for which that representative is responsible and reporting the volume of sales attributable to that representative for the preceding month; and
(f) such other information concerning Distributor or pertinent to this Distribution Agreement as Company may at any time reasonably request.
(1)按产品系列和品种列出该月的产品存货数量及产品目录;
(2)本月产品销售额及本年度到当月为止销售额;
(3)月底的现金结存表;
(4)月底应收账款财务报表还包括过期应收账款一览表,特别地确定有疑问的应收账款;
(5)经销商该整月的每个销售代表名单,明确各销售代表负责的区域或区域的部分,报告其在所述区域内上月的销售额;和
(6)本公司可以在随时合理要求的其他与经销商或本经销协议相关的其他资讯。

Section 4.3 FINANCIAL STATEMENTS. Within fifteen (15) days after the end of each calendar quarter, Distributor shall submit to Company an unaudited balance sheet and statement of income and retained earnings of Distributor, certified as true and correct by Distributor and by Distributor's president. Within ninety (90) days after the close of Distributor's fiscal year, Distributor shall also submit to Company an audited balance sheet and statement of income and retained earnings of Distributor together with the usual and customary notes and schedules related thereto, which financial statements shall be true, correct and complete and shall be accompanied by a report of an independent certified public accounting firm, selected by Distributor but subject to the approval of the Company, to the effect that such firm has examined such financial statements in accordance with generally accepted auditing standards and that, in its

opinion, such financial statements present fairly the financial position of Distributor as of the end of such fiscal year and the results of Distributor's operations for such fiscal year, in conformity with generally accepted accounting principles applied on a consistent basis.

第四条第三款 财务报表。每季度结束后15天内,经销商应向本公司提交经经销商公司及董事长确认的真实准确的未审计前的资产负债表、收益说明、留存利润。在经销商会计年度结束后90日内,经销商也应向本公司提交经经销商公司及董事长确认的真实准确的审计后的资产负债表、收益说明、留存利润说明以及平时所用票据和相关的一览表,并应随附独立注册会计师事务所的报告,该会计师事务所由经销商自己选择但是要经过本公司的批准,以便该事务所按一般公认的审计标准审查该财务报表并根据其意见,该财务报表能够公正说明经销商在该年度结束时的财务状况及该年度经销商的经营业绩,符合一贯适用的一般公认的会计原则。

Section 4.4 INSURANCE. The Distributor shall have and maintain at all times, at Distributor's sole expense, an insurance policy or policies insuring Distributor and the Company against any loss, liability or expense whatsoever as a result of personal injury, death, property damage, and with respect to its inventory of Products, insurance against risk of fire, so called extended coverage, sprinkler leakage, if applicable, and insurance against other risks customarily insured against by companies engaged in business similar to that of Distributor, in such amounts, containing such terms, in such form, for such period, and written by such companies as shall be satisfactory to the Company such insurance to be payable to the Company and to the Distributor as their interest may appear. All policies of insurance shall provide for not less than fifteen (15) days written minimum cancellation notice to the Company and shall list Company as an additional Named Insured. The Distributor shall furnish to the Company certificates or other evidence satisfactory to the Company of compliance with the foregoing insurance provisions within fifteen (15) days from date of request.

第四条第四款　保险。经销商应自费投保,保单要确保经销商和公司避免遭受无论是由人身伤害、死亡、财产损害、有关产品存货、火灾、通常所说的增加保险范围、喷洒(如果适用),还是与经销商类似商业的公司都有可能遭受到的风险、损失、责任。经销商应该以此类的形式,此类投保额度,包括此类条款由此类公司书就满足本公司要求的保单。该保险在保险利益出现时可付给本公司和经销商。所有的保单应在投保前 15 天内将书面最低限度删减通知公司,保单应该将公司名称列为附加的被保险人。经销商应在本公司要求后 15 天内提供本公司上述保险的保险证明书或者满足本公司要求的其他凭证。

Section 4. 5 CARE OF INVENTORY. Distributor shall maintain its inventory of Products in first class order and shall follow strictly all reasonable instructions from the Company regarding handling and storage of the Products which includes a policy of first in, firs tout on all sales. Distributor shall not alter in any manner whatsoever the bottles, labels or contents of any of the Products nor shall the Distributor sell or repackage any Products which are damaged without the Company's prior written consent which may, in the Company's sole and absolute discretion, be withheld.

第四条第五款　库存管理。经销商应保持库存秩序良好,严格遵守本公司关于产品装卸、储存的合理指示,包括所有销售的“先进先出”原则。经销商不得以任何方式更改产品瓶型、标签或者内容物,也不得未经公司事先书面同意销售或者重新包装任何残损品。

Section 4.6 PROTECTION OF PRODUCTS. Distributor shall not alter in any manner or form any of the Company's materials, brochures or Products.

第四条第六款　产品保护。经销商不得以任何方式或形式更改公司的产品、手册、宣传品。

合同履行的相关约定包括尽责、验收与报告、年度财务报表、保险、库存及产品保护几方面。

ARTICLE V
第五条
TERMS OF PAYMENT
支付条款

Section 5.1 TERMS OF PAYMENT BY DISTRIBUTOR. The terms of payment for the Products shall be as stated in Exhibit "D" attached hereto. Unless otherwise agreed in writing, all monies past due shall bear interest at eighteen (18) percent per annum simple interest (except that, during any period in which the balance outstanding exceeds $500,000, such interest rate shall be limited to a maximum of twenty-five (25) percent per annum simple interest calculated for such period, rather than eighteen (18) percent). Notwithstanding the foregoing, the interest rate charged shall in no event exceed the maximum rate permitted by applicable law. It is not the intent of the Company to collect or receive interest in excess of the maximum rate allowable by law, and any interest so paid shall be deemed to be a principal payment and shall be so credited and applied to the indebtedness hereunder.
第五条第一款　经销商支付条款。产品的支付条款应该在附录4中说明。除非另外签订书面协议，所有到期的未付款应支付年18%单利（除此之外，在每一个付款期间如果现金超过500,000美元，此利率最高以年25%单利为限进行计算而不是18%）。纵然如此，利率一概不得超过适用法律允许的最大限额。本公司无意收取超过法律许可最高利率的利息，所付利息应视为本金付款记入贷方账户适用该账户下的负债。

Section 5.2 COSTS OF COLLECTION. If any amounts due from the Distributor to the Company or from the Company to the Distributor hereunder are collected by or through an attorney at law, the collecting party shall be entitled to recover all costs of collection including, but not limited to, court costs, reasonable attorneys' fees and paralegal fees, (including fees on appeals) if any.

第五条第二款 托收费用。如果任何到期应付款项不论是经销商应付给公司的还是公司应付给经销商的由律师托收,则托收方有权收取托收的全部费用,包括但不限于诉讼费用、合理律师费用和律师助理费用,如果有的话(包括上诉费用)。

支付条款含委托律师收款的费用。

ARTICLE Ⅵ
第六条
TRADEMARK
商标

Section 6. 1 OWNERSHIP. The trademark "BBB" is registered with the United States Patent and Trademark Office. (Said trademark, together with any and all other trademarks, trade names, designs, signs, emblems, insignia, symbols, slogans and other marks the Company may now possess or may hereafter adopt, acquire or use in connection with the Products shall be collectively referred to herein as the "Trademarks.") The Trademarks are the exclusive and valuable property of the Company or its affiliates. Nothing herein contained shall be construed as conferring upon the Distributor any right or interest in the Trademarks or their registration, and any use of the Trademarks by the Distributor shall be solely as a licensee of the company. Distributor expressly recognizes and agrees not to contest the Company or its affiliates, ownership of the Trademarks.

第六条第一款 商标所有权。"BBB"商标在美国商标专利局注册(此商标和任何别的商标、商业名称、设计图案、符号、徽章、标识、口号和其他公司拥有或后来采用、获得、使用与该产品有关的标志本协议统称为该商标)。该商标是本公司或其附属公司专有的有值财产。本协议所含内容不得解释为转让经销商任何该商标或注册的权益,经销商对该商标的任何使用均经获得本公司单独授权许可。经销商明确承认并同意不对本公司或其附属公司的商标所有权提出异议。

Section 6.2 USE OF TRADEMARKS. Distributor may use only such of the Trademarks as the Company may authorize and only in such manner as the Company may authorize, and the decisions of the Company on all matters concerning the Trademarks shall be final and conclusive, and not subject to question by the Distributor. The Distributor shall not take, nor shall he knowingly permit, any action which may in any way prejudice or harm the Trademarks, or the Company's ownership thereof. The Distributor shall not use, nor shall it authorize any person, partnership, corporation or other entity to use, any of the Trademarks as part of a corporate, business or firm name. The Distributor shall not use the Trademarks in any way which might suggest that the Distributor is an agent, employee, partner or joint venturer of, or otherwise affiliated with, the Company and shall not use any of the Trademarks in any manner so as to suggest that the Distributor is the Company's authorized distributor for any products of the Company other than the Products as herein defined.

第六条第二款　商标的使用。经销商使用商标、怎样使用商标以及须经本公司授权。本公司对有关该商标问题的决议为最终决定性的，经销商不得质疑。经销商不得提起或有意允许以任何方式损害或侵害该商标或本公司该商标所有权的诉讼。经销商不得使用或授权任何个人、合伙、公司或其他实体使用该商标或作为公司、企业或商号名称的一部分。经销商不得以任何方式使用该商标来暗示其为本公司的代理人、雇员、合伙人或合作人或其他与本公司的关联，也不得以任何方式使用该商标来暗示其取得了本协议定义外产品本公司的授权。

Section 6.3 OBLIGATIONS UPON TERMINATION. Upon termination of this Agreement, for whatever cause, the Distributor shall abandon at once all use of the Trademarks, and shall not thereafter use in any manner whatsoever any of the Trademarks.

第六条第三款　协议终止义务。无论是由何原因导致的协议终止，经销商都应立刻终止所有该商标的使用并且从此以后不得以任何方式再使用此商标。

Section 6. 4 PROTECTION OF TRADEMARKS. The Company (or its affiliates), shall have sole and exclusive right to protect and defend the Trademarks at its sole cost and expense and shall have the sole and absolute discretion as to how to protect and defend and whether or not to protect and defend the Trademarks. The Company shall not be liable to the Distributor for any loss or damage suffered by the Distributor as a result of the use of the Trademarks, or as a result of any litigation or proceeding involving the Trademarks, or as a result of any failure by the Company to protect or defend the Trademarks. The Distributor shall cooperate fully with the Company, its affiliates in the defense and protection of the Trademarks and shall promptly and fully advise the Company of any use in the Territory of which Distributor has knowledge of any trademark or other mark infringing upon any of the Trademarks.
第六条第四款　商标的保护。本公司(或其附属公司),是唯一拥有专有权独自承担费用维护和保护商标的实体。有权独立完全决定怎样和是否维护和保护该商标的权利。本公司对由于经销商使用商标、涉及该商标的起诉,以及维护保护商标权不成致使经销商遭受的损失或损害概不承担责任。经销商应密切配合本公司及其附属公司进行该商标的维护和保护并应及时全面通知本公司其发现的任何在该区域侵害该商标权的行为。

商标的约定包括商标所有、商标的合理使用、合同终止不得使用及商标保护。

ARTICLE Ⅶ
第七条
LOCAL LAWS
本地法律

Section 7. 1 LOCAL LAWS. The Distributor shall sell and distribute the Products in compliance with all national, state, municipal, local and other governmental laws, decrees, ordinances, rules, orders, regulations and charges.

第七条第一款 地方法律。经销商一切经销活动必须符合国家、州、市、地方的法规和其他的政府法律、法令、条例、法规、裁令、规章和指示。

守法经销。

ARTICLE Ⅷ
第八条
LOCAL FEES AND TAXES
地方税费

Section 8.1 LOCAL FEES AND TAXES. The Distributor shall, at the Distributor's own cost and expense obtain all licenses, permits and other authorizations to conduct its business and for shipment to or from the Distributor of Products, equipment, and all other materials required for the selling and distributing of the Products, without any responsibility on the part of the Company with respect to such licenses, permits or authorizations. Distributor also agrees to pay all applicable taxes, licenses, fines and fees relating to Distributor's business and its purchase and sale of Products hereunder.
第八条第一款 地方税费。经销商应自行承担为进行经营获得所有许可证照和其他授权的费用,该产品、设备和所有其他经销该产品所需的材料装运的费用,但不承担本公司方有关该许可证照和授权许可的费用。销售商也同意支付与经销商经营和本协议项下该产品买卖有关的适用赋税、许可费用、罚款和费用。

地税承担。

ARTICLE Ⅸ
第九条
LEGAL RELATIONSHIP AND INDEMNIFICATION
法律关系与保证赔偿

Section 9.1 LEGAL RELATIONSHIP AND INDEMNIFICATION. Nothing in this Agreement shall create or be deemed to create any relationship of agency, employment, partnership, or joint venture between the Distributor and the Company. Distributor shall assume full responsibility and liability for, and shall indemnify and hold the Company harmless from, any loss, injury, or damage (including expenses and reasonable attorneys' fees) resulting from, or claimed to result from, any act or omission on the part of the Distributor.
第九条第一款　法律关系及保证赔偿。本协议不得创设或视为创设了经销商与本公司间任何代理、聘用、合伙或合作的关系。经销商应自行完全承担由于其作为或不作为产生的索赔、损失、伤害或损害(包括花费及合理的律师费)并保证赔偿并使本公司免于该责任。

不形成代理、聘用、合伙、合资法律关系和保证赔偿条款,这是本协议比较典型的规定。

ARTICLE Ⅹ
第十条
ASSIGNMENT
转让

Section 10.1 ASSIGNMENT OF RIGHTS OR OBLIGATIONS. Distributor may not sell, assign, transfer, pledge, lease, license, or in any other way or manner encumber or dispose of any of its rights or obligations hereunder, either in whole or in part, nor shall said rights or obligations pass by operation of law or in any other manner without the prior written

consent of the Company. The Company's right to withhold such consent shall be absolute and unqualified. If this Agreement is in any way assigned or transferred by the Company or if it is in any way assigned or transferred by the Distributor upon the prior written consent of the Company as aforesaid, then this Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties.

第十条第一款 权利或义务转让。未经本公司事先书面同意,经销商不得售卖、转让、转移、抵押、租借、许可或以其他方式、手段设定债权或处置其本合同项下权利或义务无论部分或全部,也不得运用法律或其他方式让渡该权利或义务。本公司对该同意的撤回权应是绝对无限制的。如果本协议按上述以某种方式由本公司或经销商出让,则本协议应对该方的继受方和受让方有约束力并适用其利益。

Section 10.2 TRANSFER OF STOCK OR SECURITIES. Neither Distributor nor any other person shall sell, assign, transfer, issue, reissue, pledge or otherwise dispose of or encumber, whether by operation of law or otherwise, without the prior written consent of the Company, which consent in the Company's absolute and unqualified discretion may be withheld: (i) If Distributor is a partnership, any partnership interest in Distributor; or (ii) if Distributor is a corporation, any or all of the Distributor's stock, and/or securities with voting rights and/or certificates of indebtedness with voting rights (whether or not such stock, securities or certificates or indebtedness are issuedor outstanding at such time) is such transactions either singly or when aggregated with all previous such transactions shall or may cause ________ and members of ________ immediate family to own less than fifty-one (51) percent of the outstanding voting stock of the Distributor or have less than fifty-one (51) percent of the effective voting power over the Distributor. Distributor hereby agrees that its stock shall at all times during the terms hereof bear a legend which states that its transferability is subject to the terms hereof. Distributor further warrants and covenants that its stock ownership (or partnership interest as the case may be) is now and shall be as of the effective date hereof.

第十条第二款　股票和证券的转让。未经本公司事先书面同意,经销商或者其他人不得出让、转移、转让、发行和重新发行、质押或者用其他的方式处置股份或者有价证券,或者在股份和证券上设定债权,无论是否出于法律操作。该同意为本公司完全无限制权利,可在以下情形随时收回:(1)如果经销商的公司是合伙企业,任何合伙利益;(2)如果经销商的公司是一个有限公司,拥有一部分或者全部的股份或有投票权的证券或具有投票权的债券(无论该股票、证券或债券当时已发行在外或发行未售出)的该交易,无论是单独还是与所有先前此种交易结合应该或可能导致________以及________的直系亲属的成员拥有少于51%的经销商已发行有投票权的股票或者拥有超过经销商少于51%的有效投票权。经销商在此同意其股份在协议期间提供本公司图例表明其根据本协议条款的转让。经销商进一步立契担保其股份的所有权(或合伙权益视情况而定),为本协议生效时其现有的。

合同转让和股份转让条款。

ARTICLE XI
第十一条
TERMINATION
协议终止

Section 11. 1 TERMINATION BY DISTRIBUTOR. Distributor may terminate this Agreement at any time, with or without cause, upon thirty (30) days written notice to the Company.
第十一条第一款　经销商终止。经销商随时可以终止本协议,无论有无原因,但要提前三十 (30) 天书面通知本公司。

Section 11. 2 TERMINATION BY THE COMPANY. Upon the occurrence of any one or more of the following events, in addition to all other rights and remedies, including the right to damages, the Company shall have

the right, in the Company's discretion, to terminate this agreement immediately by giving written notice thereof to the Distributor:
第十一条第二款 本公司终止。以下任一或更多事件一经产生,除其他权利和救济,包括损害赔偿请求权,本公司应有权决定立即书面通知经销商终止本协议:

(a) Distributor's failure to pay any amounts due hereunder or under any other agreement between the Company and Distributor at the time such amounts become due.
(1)经销商未能支付本协议或本公司与经销商间其他协议项下的应付到期款项。

(b) Distributor's breach or failure to perform of any other covenant, obligation, warranty, term or condition hereof or Distributor's failure to adhere to any established written Company policy which is applicable to all or substantially all of the Company's distributors and which is in its terms mandatory, if Distributor fails to cure any such breach or failure within thirty (30) days after the Company gives written notice thereof to the Distributor, provided that no such notice to cure need be given if the Company has previously given the Distributor notice to cure with respect to a breach of or failure to perform of the same covenant, obligation, warranty, term, condition or policy on at least two previous occasions, whether or not Distributor has in fact cured on such occasions.
(2)经销商违背或拒不履行本协议项下的别的契约、义务、担保、条款,或者经销商未能坚持执行已签署的适用于公司所有或大部分经销商的规章制度和其强制性条款,如果经销商在本公司书面通知30天内该事件仍然不能解决,但如果本公司就至少两次同样的该违约或不履行事件以前发过书面通知要求处理,公司将终止协议,无论前几次是否解决了问题。

(c) The discontinuation, without cause, in whole or in substantial part of distribution of the Products by the Distributor, for any reason whatsoever

(except for normal seasonal variation in the sale of the Products) for a period of more than sixty (60) days.
(3)经销商无故中止销售整个或者大部分该产品超过60天的,无论出于何种原因(产品的正常季节性变化除外)。

(d) The insolvency of the Distributor; or assignment by the Distributor for the benefit of creditors; or the filing of a voluntary bankruptcy or reorganization petition by the Distributor; or the failure of the Distributor to vacate an involuntary bankruptcy or reorganization petition filed against the Distributor, within thirty (30) days from the date of such filing; or the failure of the Distributor to vacate the appointment of a receiver or a trustee for Distributor, or for any part or interest of the Distributor's business, within thirty (30) days from the date of such appointment; or the failure of the Distributor to vacate, set aside, or have dismissed any insolvency proceeding under any law governing, or applicable to the Distributor within thirty (30) days from the date of the commencement of any such proceeding.
(4)经销商破产;或经销商为偿债转让;或经销商提出自愿破产请求或者自愿重组,或30天内未能撤销对其的强制性破产或重组请求;从该指定起30天之内,经销商未能撤销其任何业务的部分或权益破产管理人或托管人的指定或从该诉讼程式开始30天内未能根据任何管辖或适用的法律撤销、驳回或解除对经销商的该强制破产程式。

(e) The effective loss by the Distributor of management or control of the Distributor's business by virtue of any law, decree, order, rule, regulation, ordinance, foreclosure or similar cause and failure to restore such management or control to Distributor within thirty (30) days.
(5)由于经销商的管理或者由于法律、法规、政策、规定等类似原因对经销商经营的控制造成销售额的明显减低,并且经销商在30天内无法解决问题,恢复销售额。
由于法律、法令、裁令、条例、规章、规则、没收或类似原因导致经销商明显丧失对其业务管理和控制且未能在30日内恢复管理控制的。

(f) The failure by Distributor to achieve the level of sales for the Products as stated in Exhibit "E" in the Territory, unless such failure is substantially caused by the failure of the Company to supply a sufficient amount of Products with reasonable promptness or by any breach of this Agreement by the Company.
(6)经销商未能在其经销区域内达到附件5中规定的销售水平，除非是实质上由于本公司没有及时提供充足的货源，或者是由于本公司违背本协议。

Section 11.3 RIGHT TO DISCONTINUE SUPPLY. Upon the happening of any one or more of the events specified in Section 11.2 hereof or if the Company reasonably believes that Distributor may not have the financial ability to pay for the Products ordered, then the Company shall also have the right to discontinue supplying the Distributor with Products and other materials for such length of time as the Company may in its sole judgment deem necessary, without terminating this Agreement and without thereby prejudicing the Company's rights to terminate this Agreement for the same cause or for any one or more other causes.
第十一条第三款　中止供应权。如果出现一个或多个本条上款中所述情况或者公司有理由确信经销商没有经济能力去支付订单产品的情况下，本公司有权在其认为必要时，在这段时期对经销商停止供货以及其他材料而不终止本协议，并不由此而损害公司以相同事由或其他一种或多种事由终止本协议的权利。

Section 11.4 PARTIAL TERMINATION. If Distributor fails, with respect to any or all of the Products in any or all parts of the Territory, either to perform its duties or covenants hereunder or to achieve the level of sales in Section 11.2 (f) hereof, the Company may, instead of terminating this Agreement altogether, sell any or all of such Products to one or more other persons (including but not limited to Distributor's existing customers), in any or all of such parts of the Territory and, in addition or in the alternative, may withdraw the Distributor's rights to

sell any or all such Products in any or all such parts of the Territory.
第十一条第四款 部分终止。如果经销商在部分或者全部所属的区域中经营业绩不佳,未能履行本协议项下义务和约定或未能达到第11.2(f)规定的销售水平,在不终止全部合同的情况下,本公司可将该产品的部分或者全部销售给此等部分或全部区域内的一人或者多人(包括但不限于经销商现有的客户),除此之外或另行选择,可撤销经销商在本区域全部或部分销售的部分或者全部此产品的授权。

Section 11. 5 EFFECT OF TERMINATION. Termination or expiration of this Agreement for any reason shall not impair the obligation of the parties to pay any and all amounts payable hereunder at the time such amounts are or become due. Distributor's sole remedy for Company's breach of Agreement shall be termination of the Agreement.
第十一条第五款 终止效力。无论因何导致本协议的终止或届满,均不得减少协议双方偿还应付到期款项的义务。经销商因本公司违约的唯一救济应是终止协议。

Section 11. 6 OPTION TO REPURCHASE. Should this Agreement be terminated for any cause whatsoever, the Company shall have the option to purchase from the Distributor, and the Distributor shall, upon the exercise of such option by the Company, sell to the Company, any part or all of the Distributor's labels, containers, cases, cartons, mixtures, ingredients and Products at the invoice price thereof to the Distributor, less a 40% handling charge and a reasonable allowance for depreciation, deterioration and obsolescence.
第十一条第六款 优先回购权。倘若本协议无论出于何种原因而终止,本公司应有优先回购权,且本公司一经行使该回购权,经销商应以开单价卖给本公司其标签、集装箱、木箱、纸板箱、合剂、配料、产品的部分或全部。减去40%的装卸费/手续费和合理折旧费、变质、过期的费用。

合同终止条款包括约定终止情形、中止供应、部分终止、终止效力、优先回购。

ARTICLE Ⅻ
第十二条
MISCELLANEOUS
杂项条款

Section 12.1 COSTS OF ENFORCEMENT. In the event that Company initiates legal action (including both trial and appellate proceedings) to enforce its rights hereunder, Company shall recover from the non-prevailing party his or its reasonable litigation expenses (including, but not limited to, reasonable attorney's fees) of all such proceedings.
第十二条第一款 强制执行费用。如本公司为了强制执行其本协议项下权利而进行法律诉讼时(包括一审和上诉程式),败诉一方需要偿付本公司所有该诉讼程式合理的诉讼费用(包括但不限于合理的律师费用)

Section 12.2 NOTICES. Any notices required to be given under the terms of this Agreement shall be addressed to the parties at the following addresses, or at such other address designed in writing by the party to receive notice:
第十二条第二款 通知。任何在本协议期间所要求的通知均应按合同方的以下地址或者其他接受通知方书面指定的其他地址:

If to Corporation: ABC, Inc.
Attn: John Doe, President
111 Fentress Boulevard
Daytona Beach, FL 32114
致本公司: ABC, Inc.
Attn: John Doe, President
111 Fentress Boulevard
Daytona Beach, FL 32114

If to Distributor:
致经销商:

If to Guarantor(s):
致保证人:

Any party by written notice to the other parties may change the address or the persons to whom notices or copies thereof shall be directed.
任何一方变更地址或者变更主要负责人均要通知其他两方人员。

Notices shall be either (1) personally delivered (including delivery by Federal Express or other courier services) to the address set forth above, in which case they shall be deemed delivered on the date of delivery; (2) sent by Western Union Telegram, in which case they shall be deemed delivered on the date Western Union delivers it telephonic communication; (3) sent by certified mail, return receipt requested, in which case they shall be deemed delivered on the date shown on the receipt unless delivery is refused or delayed by the addressee, in which event they shall be deemed delivered on the date of the deposit in the U.S. Mail. Notices or communications to or from a party's attorney will be deemed to be or from the party.
通知应按以下任意方式:(1)亲自传递(包括联邦快递或者其他快递服务)至上列位址,在这种情况下投递当日视为送达;(2)通过西联电报,此种情况西联发出电话传送的日期视为送达;(3)保证邮件寄送,要求回执,此种情况下以回执上显示日期为送达,除非被收信人拒收或延误,则邮件的送达日期被确认为在美国邮局存放的日期。是发给或者由当事人律师发出的通知或者通信视同发给或者由该当事人发出。

Section 12. 3 ACCEPTANCE BY TELECOPIER. Either party may demonstrate its execution or acceptance of this Agreement by facsimile transmitted via telecopier showing the transmitting parties' signature thereon. Such a facsimile, once received by the other party, shall bind the transmitting party to the same extent as would delivery of this Agreement (or a counterpart hereof) containing the parties' actual signature.
第十二条第三款　传真的确认。双方中的任意一方如果要通过发送传真来签署或接受本协议必须有发送传真方在传真件上的亲笔签名。如果一方收到了该传真,应对发传真方具有约束力,视同其送达含有其真实签名的本协议文件(或者是副本)。

Section 12.4 CONSTRUCTION. The parties acknowledged that each party and its counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendment or exhibits thereto.
第十二条第四款　解释。协议方确认各方与各自的辩护律师都可以审查、修订本协议,正常的解释原则以便解决起草方的含糊之处,该含糊不得应用于本协议及其修正或其附件的解释中。

Section 12. 5 WAIVER. The failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct.
第十二条第五款　弃权声明。本协议任一方就任一他方违反本协议条款的行为反对或提起积极的诉讼未成的,不得解释为对违反、违约或任何将来的违反、违约或不正当行为作出弃权。

Section 12. 6 ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between the parties hereto concerning the subject matter hereof, and supersedes all prior memoranda, correspondence, conversations

and negotiations.

第十二条第六款　完整协议。本协议构成协议各方间就本协议标的的完整协议,取代以前所有的往来信件、谈判、会谈、备忘录。

Section 12.7 MODIFICATIONS. This Agreement cannot be altered or amended except by an instrument in writing signed by both parties.

第十二条第七款　修正。未经双方签字的书面文件,本协议不能够修改或修正。

Section 12.8 SPECIFIC PERFORMANCE. In the event of a breach or threatened breach by Distributor of any of the provisions of this Agreement, Corporation, in addition to and not in limitation of, any other rights, remedies, or damages available to Company at law or in equity, shall be entitled to a permanent injunction in order to prevent or restrain any such breach.

第十二条第八款　特别履行。如果经销商违背或者可能违背本协议条款的规定,本公司除外但不限于可按普通法或衡平法获得任何其他权利、救济和损害赔偿金,应有权申请永久禁止令以防止或约束该违约。

Section 12.9 CHOICE OF LAW. This Agreement and the performance hereunder and all suits and special proceedings hereunder shall be construed in accordance with the laws of the State of Florida.

第十二条第九款　法律的选择。本协议及本协议的履行和本协议下的所有诉讼和特别审判程式均应符合佛罗里达州的法律并按其解释。

Section 12.10 FORUM. All actions under this Agreement shall be taken in a court of competent jurisdiction in Volusia County, Florida and no party shall advance a position that such forum is improper or inconvenient.

第十二条第十款　受理法院。所有本协议下的诉讼均应在佛罗里达Volusia县的有管辖权的法院中进行,任何一方不得提出一个位置以认为该法院不合适或不方便。

Section 12. 11 INVALID PROVISIONS. The invalidity or unenforceability of a particular provision of this Agreement shall not affect the other provisions hereto, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.
第十二条第十一款 无效规定。本协议某特殊规定的无效或不可执行不得影响本协议的其他规定,即使删除无效或不可执行的规定,本协议也应被全面解释。

Section 12. 12 LEGAL EXPENSES. Each of the parties hereto agrees to bear its or their own expenses relating to the negotiation for and preparation and review of documents leading to, as well as this Agreement, whether or not the transaction contemplated hereby is consummated.
第十二条第十二款 法律费用。本协议当事人各方同意承担协商有关费用、准备和审查文件的费用以及本协议相关费用, 无论最终预期交易是否完成。

Section 12. 13 HEADINGS AND TERMINOLOGY. The headings used in this Agreement are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this Agreement. The specific terms that are defined in various provisions of this Agreement shall apply throughout this Agreement (including, without limitation, each exhibit hereto unless expressly indicated otherwise).
第十二条第十三款 标题和术语。本协议中的标题只为提及的方便无意成为本协议的部分或影响本协议的意义或解释。本协议在各种不同条款中定义的特殊术语适用于整个协议(包括但不限于,每个附件除非另有指示)。

Section 12. 14 COUNTERPARTS. This Agreement may be executed in several counterparts, and each executed copy shall constitute an original instrument, but such counterparts shall together constitute but one and the same instrument.

第十二条第十四款　协议副本。本协议签署若干副本,每一经签署的副本构成原始的文件,但所有该副本应一起构成同一文件。

Section 12. 15 CONFIDENTIALITY. The terms and conditions of this Agreement are to be held in strictest confidence and are not to be disclosed by the Representative to any third party other than appropriate Company personnel.
第十二条第十五款　保密条款。本协议的条款必须严格保密,不得由销售代表向任何第三者披露,除了本公司合适人员外。

Section 12. 16 LIMITATIONS. The word "including" in this Agreement, when followed with a listing, shall mean including, without limitation.
第十二条第十六款　限制。本协议的"包括"这个词,当后面跟有清单时,将意味包括,没有限制。

杂项条款涉及申请执行费用、通知条款、传真确认、保密条款、副本、合同解释、弃权声明、完整协议、合同修改、特别履行、法律选择、管辖法院、无效规定、标题和术语解释及限制条款。

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above mentioned by their representatives, who personally attest that they are duly authorized to enter into this Agreement.
本协议由各方代表于上述日期签字盖章生效,各代表证明其系经正式授权签署本协议,特此为证。

WITNESSES:	COMPANY:
ABC,INC.	
______________	BY:______________
______________	Its President
DISTRIBUTOR:	
______________	BY:______________
______________	Its President
见证人:	公司:
ABC 公司	
______________	签约人:______________
______________	董事长
经销商:	
______________	签约人:______________
______________	董事长

结尾即证明部分,双方由授权代表签约,特此为证。

EXHIBITS

附件(略)

第二节 范例二:股权转让协议
(Share Purchase Agreement)

THIS AGREEMENT dated as of April 30, 2003 among The Wackenhut Corporation, a Florida corporation ("Wackenhut"), Tuhnekcaw, Inc., a Delaware corporation and a wholly-owned subsidiary of Wackenhut ("TUHNEKCAW"), Group 4 Falck A/S, a corporation organized under the laws of Denmark ("GROUP 4 FALCK" and, together with Wackenhut and Tuhnekcaw, the "SELLERS"), and Wackenhut Corrections Corporation, a Florida corporation (the "PURCHASER"). Wackenhut, Tuhnekcaw, Group 4 Falck and the Purchaser are herein referred to individually as a "PARTY" and collectively as the "PARTIES."

WITNESSETH:

WHEREAS, as of the date hereof, Tuhnekcaw owns of record, and Group 4 Falck and Wackenhut Beneficially Own, 12,000,000 shares of the Purchaser's common stock, par value $.01 per share (the "COMMON STOCK");

WHEREAS, the Sellers desire to sell, and the Purchaser desires to purchase, all of the shares of the Purchaser's Common Stock owned by the Sellers on the terms and subject to the conditions set forth in this Agreement;

WHEREAS, the Board of Directors of the Purchaser (the "BOARD"), at a meeting duly called and held upon the recommendation of an Independent Committee of the Board (the "INDEPENDENT COMMITTEE"), has adopted a resolution authorizing this Agreement

and the transactions contemplated hereby; and

WHEREAS, the Independent Committee has received an opinion dated April 30, 2003, from Legg Mason Wood Walker, Incorporated, the financial advisor to the Independent Committee, that the consideration being paid in connection with the transactions contemplated by this Agreement is fair from a financial point of view to all holders of the Purchaser's Common Stock other than the Sellers.

NOW, THEREFORE, the Parties hereto agree as follows:

这是一个股权转让协议,作为前言部分,也就是开场白,介绍了合同的主体(卖方为三方,分别是 Wackenhut、Tuhnekcaw 和 GROUP 4 FALCK,买方为 Wackenhut Corrections Corporation)、签约时间以及背景情况,值得注意的是,这里摒弃了常见的关于合同对价(consideration 之类)的套话,直接过渡引出协议正文。这部分内容对于读者有重要的参考价值。

ARTICLE 1
DEFINITIONS

Section 1. 01. DEFINITIONS. The following terms, as used herein, shallhave the following meanings:

"ACQUISITION PROPOSAL" means any offer or proposal for, or any indication of interest in, a merger or other business combination involving the Purchaser or any Subsidiary of the Purchaser or the acquisition of any equity interest in, or a substantial portion of the assets of, the Purchaser or any Subsidiary of the Purchaser.

"AFFILIATE" means, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with such Person; PROVIDED THAT for the purposes hereof

none of the Sellers shall be deemed an Affiliate of the Purchaser. For the purpose of this definition, the term "control" (including with correlative meanings, the terms "controlling", "controlled by" and "under common control with"), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

"APPLICABLE CLAIMS" has the meaning set forth in Section 5.03(c) of this Agreement.

"BENEFICIAL OWNERSHIP" and "BENEFICIALLY OWN" shall be determined in accordance with Rules 13d – 3 and 13d – 5 under the Exchange Act.

"BOARD" has the meaning set forth in the recitals to this Agreement.

"BUSINESS DAY" means any day except a Saturday, Sunday or other day on which commercial banks in New York or Florida are authorized by law to close.

"CLOSING" has the meaning set forth in Section 2.02 of this Agreement.

"CLOSING DATE" means the date of the Closing.

"COMMON STOCK" has the meaning set forth in the recitals to this Agreement.

"DAMAGES" has the meaning set forth in Section 8.02(a) of this Agreement.

"EXCHANGE ACT" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"FINANCING LETTERS" means the letters dated April 30, 2003 attached hereto as Exhibit A.

"GROUP 4 FALCK" has the meaning set forth in the preamble to this Agreement.

"INDEMNITY AGREEMENT" means that certain Indemnity Agreement, dated as of December 9, 2002, by and among Wackenhut, the Trustee of the Wackenhut Corporation Group Insurance Program of Employees and Dependents, and the Purchaser, relating to certain employee health care benefit claims.

"INDEPENDENT COMMITTEE" has the meaning set forth in the recitals to this Agreement.

"LETTER AGREEMENT" means that certain letter agreement dated as of March 7, 2002, between the Purchaser and Group 4 Falck, relating to a potential sale of the Purchaser's interest in its joint venture in the United Kingdom.

"LIEN" means, with respect to any property or asset, any mortgage, lien, pledge, charge, security interest, encumbrance or other adverse claim of any kind in respect of such property or asset.

"NON-SOLICITATION AGREEMENT" means the Covenant of Indemnification, Release and Non-Solicitation Agreement, dated as of September 18, 2002, between Wackenhut and the Purchaser, relating to certain matters between Wackenhut and the Purchaser.

"PARTY" has the meaning set forth in the preamble to this Agreement.

"PERSON" means an individual, corporation, partnership, limited liability company, association, trust or other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

"PURCHASE PRICE" has the meaning set forth in Section 2.01 of this Agreement.

"PURCHASER" has the meaning set forth in the preamble to this Agreement.

"PURCHASER INDEMNIFIED PERSON" has the meaning set forth in Section 8.02(a) of this Agreement.

"RELATED AGREEMENTS" means contracts, agreements, arrangements or understandings between or concerning the Sellers or their Affiliates, on the one hand, and the Purchaser or its Affiliates, on the other hand.

"SAFEGUARDS AGREEMENT" means the Agreement dated March 7, 2002, among the Purchaser, Wackenhut and Group 4 Falck, as amended from time to time, relating to the conditions under which the Purchaser approved Group 4 Falck's acquisition of Wackenhut.

"SELLER INDEMNIFIED PERSON" has the meaning set forth in Section 8.02(b) of this Agreement.

"SELLERS" has the meaning set forth in the preamble to this Agreement.

"SENIOR SELLER OFFICERS" means (i) the senior officers of Wackenhut and (ii) Soren Lundsberg-Nielsen and Lars Norby Johansen.

"SERVICES AGREEMENT" has the meaning set forth in Section 5.03 (a) of this Agreement.

"SHARES" means 12,000,000 shares of Common Stock owned, as of the date hereof, by the Sellers.

"SOFTWARE AGREEMENT" has the meaning set forth in Section 5.03 (a) of this Agreement.

"SUBSIDIARY" means any Person of which securities or other ownership interests having ordinary voting power to elect a majority of the board of directors or other persons performing similar functions are at the time directly or indirectly owned by any Party.

"TUHNEKCAW" has the meaning set forth in the preamble to this Agreement.

"VOTING SECURITIES" means all securities of the Purchaser entitled, in the ordinary course, to vote in the election of directors of the Purchaser.

"WACKENHUT" has the meaning set forth in the preamble to this Agreement.

这部分是定义条款,复杂的交易,其协议中的定义条款往往很长。包含了协议中使用的定义。这些定义是协议各方对协议中某些用语的准确描述,定义具有法律效力,能使法院据以确定协议方对所用术语理解的实质内容。其中"Affiliate"的定义尤为典型,在其他种类的商务合同中也很常见。有兴趣的朋友可以试着翻译一下,很考验译者的理解和表达能力。

ARTICLE 2

PURCHASE AND SALE

Section 2.01. PURCHASE AND SALE. Upon the terms and subject to the conditions of this Agreement, the Sellers agree to sell to the Purchaser, and the Purchaser agrees to purchase from the Sellers, the Shares at the Closing. The purchase price for the Shares (the "PURCHASE PRICE") is $132,000,000. The Purchase Price shall be paid as provided in Section 2.02.

Section 2.02. CLOSING. The closing (the "CLOSING") of the purchase and sale of the Shares hereunder shall take place at the offices of Akerman Senterfitt, One Southeast Third Avenue, 28th Floor, Miami, Florida 33131, as soon as possible, but in no event later than four Business Days, after satisfaction (or waiver by the Party entitled to the benefit of such condition) of each of the conditions set forth in Article 7. At the Closing:

(a) The Purchaser shall deliver to the Sellers the Purchase Price in immediately available funds by wire transfer to an account designated by the Sellers, by notice to the Purchaser, which notice shall be delivered not later than two Business Days prior to the Closing Date.

(b) The Sellers shall deliver to the Purchaser a certificate or certificates for the Shares duly endorsed or accompanied by stock powers duly endorsed in blank, with any required transfer stamps affixed thereto.

(c) Group 4 Falck will deliver to the Purchaser the resignations of all directors of the Purchaser designated by Group 4 Falck from their positions as directors.

这一条是交易的核心,对股权转让的标的、支付价格以及成交的时间、地点和条件以及成交时各方的义务作出了规定。买方支付转让价款,卖方提交股权凭证,Group 4 Falck 向买方提交其指定董事的辞呈。需要注意的是第2.02条提及的第7条的 conditions,是指交易的前提条件,只有该等条件得以满足或被放弃,交易才可成交。通常在股权转让协议中都会作如此约定。

ARTICLE 3
REPRESENTATIONS AND WARRANTIES OF THE SELLERS

The Sellers, jointly and severally, represent and warrant to the Purchaser *that*:

Section 3. 01. CORPORATE EXISTENCE AND POWER. Each is a company duly organized and validly existing under the laws of its jurisdiction of organization, and has all corporate powers and all material governmental licenses, authorizations, permits, consents and approvals required to carry out the transactions contemplated by this Agreement.

Section 3. 02. OWNERSHIP OF SHARES. The Sellers or their wholly-owned Subsidiaries are the record and beneficial owners of the Shares, and will transfer and deliver to the Purchaser at the Closing valid title to the Shares free and clear of any Lien or any other limitation or restriction. The Sellers Beneficially Own 12,000,000 shares of Common Stock, in the aggregate, and none of the Sellers nor any of their Affiliates Beneficially Own any securities of the Purchaser other than such 12,000,000 shares of Common Stock.

Section 3. 03. AUTHORIZATION; NO BREACH. The execution, delivery and performance of this Agreement by each of them and the consummation of the transactions contemplated hereby are within their powers and have been duly authorized by all necessary action on their part, including without limitation any requisite approval of their shareholders. This Agreement has been duly and validly executed by them and constitutes a legal, valid and binding obligation of them, enforceable against them in accordance with this Agreement's terms. The execution, delivery and performance by them of this Agreement and the consummation of the transactions contemplated hereby, do not and will not, (i) conflict with, violate or result in a default under or breach of, (ii) result in the creation of any Lien, right or obligation of Purchaser, or require any payment by Purchaser, relating to the Shares pursuant to or (iii) require any authorization, permit, filing, consent, approval, exemption or other action by or notice or declaration to, or filing with, any court or administrative or governmental body or agency of any jurisdiction pursuant to, (iv) the certificate of incorporation, bylaws or other organizational documents of either of them, (v) any law, statute, rule, regulation, order, judgment or decree to which either of them, any of their Subsidiaries or any of their directors or executive officers is subject, or (vi) any material agreement or material instrument to which either of them, any of their Subsidiaries or any of their directors or executive officers is a party or subject; except for any filings that may be required under applicable securities laws or stock exchange rules and regulations.

Section 3. 04. NO OTHER AGREEMENTS. To the knowledge of the Senior Seller Officers, other than the Safeguards Agreement, the Letter Agreement and the other agreements referred to in Section 5. 03 hereof, there are no Related Agreements.

Section 3. 05. FINDER'S FEES. Except for Lehman Brothers, whose fees will be paid by the Sellers, there is no investment banker, broker, finder or other intermediary which has been retained by or is authorized to act on behalf of any of them or any of their Affiliates which might be entitled to any fee or commission from them or any of their Affiliates as a result of or upon consummation of the transactions contemplated by this Agreement.

ARTICLE 4

REPRESENTATIONS AND WARRANTIES OF THE PURCHASER

The Purchaser represents and warrants to the Sellers as follows:

Section 4. 01. CORPORATE EXISTENCE AND POWER. The Purchaser is a corporation duly organized, validly existing and in good standing under the laws of Florida, and has all corporate powers and all material governmental licenses, authorizations, permits, consents and approvals required to carry out the transactions contemplated by this Agreement.

Section 4. 02. AUTHORIZATION; NO BREACH. The execution, delivery and performance by the Purchaser of this Agreement and the consummation of the transactions contemplated hereby are within the Purchaser's powers and have been duly authorized by all necessary action on the part of the Purchaser. This Agreement has been duly and validly executed by the Purchaser and constitutes a legal, valid and binding obligation of the Purchaser, enforceable against it in accordance with this Agreement's terms. Subject to the receipt of funds specified in the Financing Letters, the execution, delivery and performance by the Purchaser

of this Agreement and the consummation of the transactions contemplated hereby and thereby, do not and will not, (ⅰ) conflict with, violate or result in a default under or breach of or (ⅱ) require any authorization, permit, filing, consent, approval, exemption or other action by or notice or declaration to, or filing with, any court or administrative or governmental body or agency of any jurisdiction pursuant to, (ⅲ) the Purchaser's Amended and Restated Certificate of Incorporation or By-laws or (ⅳ) any law, statute, rule, regulation, order, judgment or decree to which the Purchaser, any of its Subsidiaries or any of its directors or executive officers is subject; except for any filings that may be required under applicable securities laws or stock exchange rules and regulations. The Purchaser has a good faith belief that, prior to July 31, 2003, it shall have obtained any and all consents (including, without limitation, those consents required to be obtained pursuant to Section 7.02 (c) hereto) necessary under any material agreement or material instrument to which the Purchaser, any of its Subsidiaries or any of its directors or executive officers is a party or subject, for the performance by the Purchaser of this Agreement and the consummation of the transactions contemplated hereby.

Section 4.03. FINANCING. The Purchaser has delivered to Group 4 Falck a correct and complete copy of the Financing Letters. Other than the Financing Letters and an associated fee letter (which fee letter contains no term contrary to any of the terms of the Financing Letters), there are no contracts, agreements, arrangements or understandings, in each case whether oral or written, between the Purchaser and the counterparties to the Financing Letters or any of their Affiliates that relate to this Agreement or the transactions contemplated hereby. Assuming receipt of the funds specified in the Financing Letters on the terms thereof, the Purchaser acknowledges that it will have, at or prior to the Closing, available lines of credit or other sources of funds to enable it to make payment of the Purchase Price and all other fees and expenses

required to be paid by it in accordance with this Agreement.

Section 4. 04. NO OTHER AGREEMENTS. To the knowledge of the senior officers of the Purchaser, other than the Safeguards Agreement, the Letter Agreement and the other agreements referred to in Section 5. 03 hereof, there are no Related Agreements.

Section 4. 05. FINDERS' FEES. Except for Legg Mason Wood Walker Incorporated, whose fees will be paid by the Purchaser, and any fees payable by the Purchaser to parties specified in the Financing Letters, there is no investment banker, broker, finder or other intermediary which has been retained by or is authorized to act on behalf of the Purchaser or any of its Affiliates which might be entitled to any fee or commission from the Purchaser or any of its Affiliates as a result of or upon consummation of the transactions contemplated by this Agreement.

Section 4.06. SOLVENCY. The Purchaser believes that it currently meets and, after giving effect to the transactions contemplated by this Agreement (including payment of fees related thereto), that it will meet, the solvency test set forth in Section 607.06401(3) of the Florida Business Corporation Act.

第3条和第4条是股权转让双方的陈述和保证，内容大体对等相同，大多涉及缔约、履约资格和能力。股权转让类的协议通常会有比较详尽的陈述和保证条款。其中第4.06条为买方对卖方关于偿付能力的陈述和保证，即其现在以及本协议之交易生效后都会满足佛罗里达州商业公司法案 Section 607.06401(3)规定的偿付能力测试。也就是买方陈述保证有支付交易价款的能力。"Finder"在此等陈述和保证条款中的意思是指介绍商业机会的服务商，它不同于 broker, finder 只介绍商业机会而不参与磋商等活动。

ARTICLE 5
CERTAIN COVENANTS OF THE PARTIES

Section 5. 01. REASONABLE BEST EFFORTS. Subject to the terms and conditions of this Agreement, each of the Parties agrees that it will use its reasonable best efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary or desirable under applicable laws and regulations to consummate the transactions contemplated by this Agreement; PROVIDED THAT in no event shall the Purchaser be required to pay costs and expenses in connection with arranging any financing in connection with the transactions contemplated hereby (or any alternative financing) in excess of the costs and expenses contemplated by the Financing Letters or agree to financing terms that differ in a manner adverse to the Purchaser from those contemplated by the Financing Letters.

Section 5.02. PUBLIC ANNOUNCEMENTS. The Parties agree to consult with each other before issuing any press release or making any public statement with respect to this Agreement or the transactions contemplated hereby and will not issue any such press release or make any such public statement prior to such consultation; PROVIDED, HOWEVER, that, in the case of any press release or public statement that may be required to be issued under any applicable law or listing agreement with any securities exchange, a Party shall be deemed to have satisfied its obligations under this Section 5. 02 by using its reasonable best efforts (after giving due regard to all the relevant circumstances) to consult with the other Parties hereto prior to issuing any such press release or public statement.

Section 5.03. TERMINATION OF CERTAIN AGREEMENTS.

The Sellers and the Purchaser agree as follows:

(a)(i) The Services Agreement between Wackenhut and Purchaser dated October 28, 2002 (the "SERVICES AGREEMENT") and the provision of Information Systems related services provided by Wackenhut to Purchaser thereunder, shall terminate as of December 31,2003, and thereafter no payments under such Services Agreement in respect of any period after December 31, 2003 shall be due or payable from Purchaser to Wackenhut; PROVIDED THAT, prior to and following the termination of the Services Agreement, Wackenhut shall reasonably cooperate with Purchaser to ensure a smooth transition in the transfer of Information Systems related services from Wackenhut to Purchaser. Notwithstanding anything in this Section 5.03(a)(i) to the contrary, it is understood and agreed that the Services Agreement shall remain in full force and effect if the Closing hereunder is not consummated in accordance with the terms hereof.

(ii) All agreements relating to the sublease of the property located at 4200 Wackenhut Drive, Palm Beach Gardens, Florida 33410, from Wackenhut, as sublessor, to the Purchaser, as sublessee, shall be terminated effective as of the Closing Date, and no payments under any agreements relating to such sublease in respect of any period after the Closing Date shall be due or payable from the Purchaser to Wackenhut; it being understood and agreed that such agreements shall remain in full force and effect if the Closing hereunder is not consummated in accordance with the terms hereof.

(b) The Parties agree that the Safeguards Agreement and the Letter Agreement shall each terminate effective as of the Closing Date and shall be of no further force or effect, it being understood and agreed that such agreements shall remain in full force and effect if the Closing hereunder is not consummated in accordance with the terms thereof.

(c) Wackenhut will continue to handle all general liability, automobile and workers' compensation claims on behalf of the Purchaser and its Affiliates with occurrence dates prior to October 2, 2002. The Purchaser agrees that, for all claims with dates of loss prior to October 2, 2002 for which the Purchaser was or is an insured party under certain insurance policies reinsured by Titania Insurance Company of America (collectively, the "APPLICABLE CLAIMS"), it shall, consistent with its duties and obligations as an insured party, cooperate fully with Wackenhut and its Affiliates and any third party administrators, investigators, adjusters and attorneys in connection with the investigation, defense and resolution of any Applicable Claims.

(d) The Parties agree that the Indemnity Agreement shall remain in effect in accordance with its terms notwithstanding this Agreement and the consummation of the Closing hereunder.

(e) Except for Section 3 of the Non-Solicitation Agreement which shall terminate and be of no further force or effect as of the first anniversary of the Closing Date, the Parties agree that the Non-Solicitation Agreement shall remain in effect in accordance with its terms notwithstanding this Agreement and the consummation of the Closing hereunder, it being understood and agreed that the Non-Solicitation Agreement shall remain in full force and effect if the Closing hereunder is not consummated in accordance with the terms hereof. The Purchaser further agrees that it shall abide by any and all otherwise applicable non-compete agreements between Wackenhut and employees of Wackenhut and its Affiliates.

(f) The Parties agree that the Purchaser's software licensing rights under the terms of that certain Master Software License Agreement, dated April 2, 1998, between Wackenhut and Infinium Software, Inc., as amended (the "SOFTWARE AGREEMENT"), shall remain in effect in accordance with the terms of the Software Agreement notwithstanding this Agreement and the consummation of the Closing hereunder, to the extent that the Purchaser complies with all of its obligations under the Software Agreement. Wackenhut covenants and agrees not to take any action adverse or detrimental to Purchaser's licensing rights under the Software Agreement following the Closing.

(g) Notwithstanding anything to the contrary in this Agreement, except as *explicitly provided elsewhere herein*, all Related Agreements shall terminate in connection with the consummation of the Closing hereunder in accordance with its terms, and all obligations under any Related Agreement pursuant to which one party thereto is obligated to guarantee or otherwise ensure the performance of any obligations or undertakings of the other party thereto to any other Person shall terminate as to each other concurrently therewith.

Section 5.04. USE OF THE NAME "WACKENHUT".

(a) The Parties agree and acknowledge that the use of the name, trademark or service mark "Wackenhut" in all of its forms is, and shall remain, the sole property of Sellers and their Affiliates following the consummation of the Closing hereunder and, except as expressly provided in Section 5.04(b), none of the Purchaser or any of its Affiliates shall retain any rights (including without limitation any rights of use) therein.

(b) Notwithstanding Section 5.04(a), the Purchaser and its Affiliates shall be permitted to use the name, trademark or service mark "Wackenhut" to the same extent they use them as of the date hereof for a period not to exceed one year following the Closing hereunder; PROVIDED THAT during such period Purchaser and its Affiliates shall use their respective reasonable best efforts to eliminate the use of the name "Wackenhut" from their operations as rapidly as possible. Notwithstanding the foregoing, with respect to its corporate name, (i) the Purchaser shall recommend in its 2004 proxy statement that its shareholders vote to amend the Purchaser's articles of incorporation to eliminate "Wackenhut" from the Purchaser's name at the Purchaser's 2004 annual meeting of its shareholders and (ii) if the Purchaser continues to use the name "WCC", it shall prior to the first anniversary of the Closing Date develop an alternative full name for the initial "W" in the name "WCC".

第5条是股权转让各方的某些约定,涉及了合理的最大努力、公告、某些与该交易有关协议的终止以及卖方商标标识的权属和使用。其中有关协议终止的情形规定得非常详尽,涉及服务协议(Services Agreement),分组协议(Sublease Agreement),保障协议(Safeguards Agreement),适用索赔(Applicable Claims),赔偿协议(Indemnity Agreement),竞业禁止协议(Non-Solicitation Agreement),软件协议(Software Agreement)和所有有关协议(Related Agreements)的终止情形。

ARTICLE 6
STANDSTILL

Section 6.01. ACQUISITION OF VOTING SECURITIES. Effective on and after the date hereof, the Sellers will not, and will not permit any of their Subsidiaries to, purchase or otherwise acquire, or agree or offer to purchase or otherwise acquire, Beneficial Ownership of any Voting Securities.

Section 6.02. CERTAIN ACTIONS. Effective on and after the Closing Date, the Sellers will not, and will not permit any of their Affiliates to:

(a) make, or take any action to solicit, initiate or encourage, an Acquisition Proposal;

(b) seek to influence or control, in any manner whatsoever, the management or policies of the Purchaser;

(c) make, or in any way participate in, any "solicitation" of "proxies" to vote (as such terms are defined in Rule 14a-1 under the Exchange Act), solicit any consent or communicate with or seek to advise or influence any Person with respect to the voting of any Voting Securities or nominate, or solicit any votes or proxies for the nomination of, any directors with respect to the Purchaser;

(d) form, join or encourage the formation of any "group" (within the meaning of Section 13(d)(3) of the Exchange Act) with respect to any Voting Securities;

(e) call or seek to have called any meeting of the shareholders of the Purchaser;

(f) solicit, seek to effect, negotiate with or voluntarily provide any information to any other Person with respect to, or make any statement or proposal, whether written or oral, to the Board or otherwise make any public announcement (except as required by law or the requirements of any relevant stock exchange) whatsoever with respect to, any form of acquisition or business combination transaction involving the Purchaser or any significant portion of its assets, including, without limitation, a merger, tender offer, exchange offer or liquidation, or any restructuring, recapitalization or similar transaction with respect to the Purchaser;

(g) take any action that raises a significant risk that the Purchaser might be required to make a public announcement regarding a business combination, merger or other type of transaction described above;

(h) assist, advise or encourage any other Person in doing any of the foregoing; or

(i) request to amend, waive or not to enforce any provision of this paragraph, unless specifically invited by the Board to do so.

Section 6.03. TERMINATION OF STANDSTILL PROVISIONS. The provisions of this Article 6 shall terminate upon the earliest to occur of any of the following:

(a) the written agreement of the Purchaser and the Sellers to terminate the provisions of this Article 6;

(b) the first anniversary of the Closing Date; or

(c) the termination of this Agreement in accordance with the provisions of Article 9 hereof.

第6条是有关停滞期(Standstill)的规定,在此期间卖方及其关联方不得进

行某些活动(诸如:作出或采取行动招徕、发起或怂恿收购议案;寻求以任何方式影响或控制买方的经营管理或领导决策;影响表决权证券的投票或提名买方的任何董事;成立或加入或怂恿成立表决权证券的任何集团;召集或企图召集买方股东会;有关买方的收购、兼并等交易的公布、声明等;采取任何可能导致要求买方必须公布涉及其的收购、兼并等交易的行动等等)来影响本股权转让,确保交易顺利成交。

ARTICLE 7
CONDITIONS TO CLOSING

Section 7.01. CONDITIONS TO OBLIGATIONS OF EACH PARTY. The obligations of each Party to consummate the Closing are subject to the satisfaction of the following conditions:

(a) No provision of any applicable law or regulation and no judgment, injunction, order or decree shall prohibit the consummation of the Closing.

(b) No material proceeding challenging this Agreement or any of the transactions contemplated hereby or seeking to prohibit, alter, prevent or materially delay the Closing shall have been instituted by any Person before any court, arbitrator or governmental body, agency or official and be pending, which in the reasonable judgment of any Party, may reasonably be expected to cause such Party or any of its Affiliates, to incur or suffer any Damages; PROVIDED THAT such Party has received a written opinion of its counsel to such effect.

Section 7.02. CONDITIONS TO OBLIGATION OF THE PURCHASER. The obligation of the Purchaser to consummate the Closing is subject to the satisfaction of the following further conditions:

(a) (i) The Sellers shall have performed in all material respects all of their obligations hereunder required to be performed by them on or prior to the Closing Date,

(ii) the representations and warranties of the Sellers contained in this Agreement and in any certificate or other writing delivered by the Sellers pursuant hereto shall be true in all respects at and as of the Closing Date as if made at and as of such time, and

(iii) the Purchaser shall have received a certificate from the Sellers signed by the chief executive officer of each of the Sellers to the foregoing effect.

(b) The Purchaser shall have received all funds contemplated in the Financing Letters on the terms set forth therein.

(c) The Purchaser shall have obtained any consents required pursuant to the terms of any material agreements or instruments with its lenders or its customers and under any agreements specified by the counterparties to the Financing Letters or any of their Affiliates, including, without limitation, those agreements set forth in the list provided by the Purchaser to the Sellers on April 30, 2003, in each case in form and substance reasonably acceptable to the Purchaser.

(d) The Purchaser shall be able to meet the solvency test set forth in Section 607.06401(3) of the Florida Business Corporation Act as of the Closing Date after giving effect to the consummation of the transactions contemplated by this Agreement (including payment of fees related thereto) and the Purchaser shall have received a certificate or opinion to that effect from an independent firm of nationally recognized standing customarily engaged in rendering such certificates or opinions.

Section 7.03. CONDITION TO OBLIGATION OF THE SELLERS. The obligation of the Sellers to consummate the Closing is subject to the satisfaction of the following further conditions:

(a) The Purchaser shall have performed in all material respects all of its obligations hereunder required to be performed by it on or prior to the Closing Date.

(b) The representations and warranties of the Purchaser contained in this Agreement and in any certificate or other writing delivered by the Purchaser pursuant hereto shall be true in all respects at and as of the Closing Date as if made at and as of such time.

(c) The Sellers shall have received a certificate from the Purchaser signed by its chief executive officer to the foregoing effect.

第7条就是上述提及的双方欲完成本股权转让交易需要满足的前提条件,涉及各自的陈述和保证(含证照的真实有效性)、无司法阻却(含讼累)、股权转让资金要求以及满足特定的条件——偿付能力测试(solvency test)等等,这些前提条件对于交易的成交非常重要,往往需要通过尽职调查加以佐证。

ARTICLE 8
SURVIVAL; INDEMNIFICATION

Section 8.01. SURVIVAL. The representations and warranties of the Parties hereto contained in this Agreement or in any certificate or other writing delivered pursuant hereto or in connection herewith, shall survive the Closing until the second anniversary of the Closing Date, except that the representations and warranties contained in Sections 3.01, 3.03, 4.01 and 4.02 shall survive indefinitely. Notwithstanding the preceding sentence, any representation or warranty in respect of which indemnity may be sought under this Agreement shall survive the time at which it would otherwise terminate pursuant to the preceding sentence, if notice of the inaccuracy or breach thereof giving rise to such right of indemnity shall have been given in reasonable detail to the Party against whom such indemnity may be sought prior to the time of such termination. The covenants and agreements of the Parties contained in this Agreement shall survive the Closing in accordance with their terms or, if no term is specified, indefinitely.

Section 8.02. INDEMNIFICATION.

(a) The Sellers, jointly and severally, hereby indemnify the Purchaser, any Affiliate of the Purchaser and any of their respective directors, officers, agents and employees (a "PURCHASER INDEMNIFIED PERSON") against and agrees to hold each of them harmless from any and all losses, claims, damages, costs, liabilities or expenses (or actions, suits or proceedings in respect thereof), including, without limitation, reasonable expenses of investigation and reasonable attorneys' fees and expenses in connection with any action, suit or proceeding ("DAMAGES") incurred or suffered by any Purchaser Indemnified Person, in each case arising out of any misrepresentation or breach of warranty, covenant or agreement made or to be performed by any of the Sellers pursuant to this Agreement.

(b) The Purchaser hereby indemnifies the Sellers, any Affiliate of the Sellers and any of their respective directors, officers, agents and employees (a "SELLER INDEMNIFIED PERSON") against and agrees to hold each of them harmless from any and all Damages incurred or suffered by any Seller Indemnified Person, in each case arising out of any misrepresentation or breach of warranty, covenant or agreement made or to be performed by the Purchaser pursuant to this Agreement.

(c) Each Party agrees to promptly reimburse the other Parties hereto against any Damages arising out of any guarantee or other obligation or undertaking to third parties entered into prior to the date hereof (if any) if (x) the reimbursing Party was the primary obligor in respect of such guarantee, obligation or undertaking and (y) the claiming Party had guarantor liability or other secondary liability solely as a result of an agreement with respect to the obligations of the reimbursing Party, which agreement was entered into prior to the date hereof.

Section 8.03. NO SPECIAL DAMAGES. Notwithstanding anything to the contrary herein, no Party shall be liable to any other Party for any indirect, special, punitive, exemplary or consequential loss or damage (including any loss of revenue or profit) arising out of this Agreement. Both parties shall use commercially reasonable efforts to mitigate their damages.

第 8.01 条规定某些条款和条件在成交后一定时间持续有效。第 8.02 条规定了因违反陈述和保证以及约定向对方作出赔偿,以及对间接的、特定的、惩罚性或继发的损害赔偿的免责,相当于一般商务合同中的违约救济。

ARTICLE 9
TERMINATION

Section 9.01. TERMINATION. Anything contained herein to the contrary notwithstanding, this Agreement may be terminated and the transactions contemplated hereby abandoned at any time prior to the Closing:

(a) by mutual written consent of the Parties;

(b) by the Purchaser if any of the conditions set forth in Section 7.01 or 7.02 shall have become incapable of fulfillment, and shall not have been waived by the Purchaser;

(c) by the Sellers if any of the conditions set forth in Section 7.01 or 7.03 shall have become incapable of fulfillment, and shall not have been waived by the Sellers;

(d) by any of the Parties if the Closing does not occur on or prior to July 31, 2003;

PROVIDED THAT the Party seeking termination pursuant to clause (b), (c), or (d) is not in breach of any of its representations, warranties, covenants or agreements contained in this Agreement.

Section 9.02. NOTICE OF TERMINATION. In the event of termination by any of the Parties pursuant to this Article 9, written notice thereof shall forthwith be given to the other Party or Parties and the transactions contemplated by this Agreement shall be terminated, without further action by any Party.

Section 9. 03. EFFECT OF TERMINATION. If this Agreement is terminated and the transactions contemplated hereby are abandoned as described in this Article 9, this Agreement shall become void and of no further force and effect. Nothing in this Article 9 shall be deemed to release any Party from any liability for any breach by such Party of the terms and provisions of this Agreement or to impair the right of any Party to compel specific performance by another Party of its obligations under this Agreement.

第9条是终止条款,规定了终止的情形和方式以及终止的效力。包括协议终止、前提条件未能满足且未得放弃的终止以及未在成交日当日或之前成交的终止,三种终止情形。

ARTICLE 10
MISCELLANEOUS

Section 10.01. NOTICES. All notices, requests and other communications to any Party hereunder shall be in writing (including facsimile transmission) and shall be given,

if to the Purchaser, to:

Wackenhut Corrections Corporation
One Park Place
621 NW 53rd Street, Suite 700
Boca Raton, Florida 33487
Attention: General Counsel
Fax: 561 -999 -7744

and

Independent Committee of Wackenhut Corrections Corporation
c/o Wackenhut Corrections Corporation
One Park Place
621 NW 53rd Street, Suite 700
Boca Raton, Florida 33487
Attention: Chairman
Fax: 561 -999 -7744

with copies to:

Akerman Senterfitt
One Southeast Third Avenue
28th Floor
Miami, FL 33131 -1714
Attention: Stephen Roddenberry
Fax: 305 -374 -5095

and

Davis Polk & Wardwell
450 Lexington Avenue
New York, NY 10017
Attention: Leonard Kreynin
Fax: 212 -450 -3800

if to the Sellers, to:

Group 4 Falck A/S
Polititorvet
DK -1780 Copenhagen V
Denmark
Attention: Group General Counsel

Fax: + 45 33 91 00 26

with copies to:

The Wackenhut Corporation
4200 Wackenhut Drive, #100
Palm Beach Gardens, Florida 33410
Attention: General Counsel
Fax: 561 - 691 - 6680

and

Simpson Thacher & Bartlett
3330 Hillview Avenue
Palo Alto, CA 94304
Attention: Kevin Kennedy
Fax: 650 - 251 - 5002

All such notices, requests and other communications shall be deemed received on the date of receipt by the recipient thereof if received prior to 5 p. m. in the place of receipt and such day is a Business Day in the place of receipt. Otherwise, any such notice, request or communication shall be deemed not to have been received until the next succeeding Business Day in the place of receipt.

Section 10.02. AMENDMENTS AND WAIVERS.

(a) Any provision of this Agreement may be amended or waived if, but only if, such amendment or waiver is in writing and is signed, in the case of an amendment, by each Party to this Agreement, or in the case of a waiver, by the Party against whom the waiver is to be effective.

(b) No failure or delay by any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law.

Section 10. 03. EXPENSES; DOCUMENTARY TAXES. Except as otherwise contemplated by this Agreement, each Party will bear its own costs and expenses (including legal fees and expenses) incurred in connection with this Agreement and the transactions contemplated hereby. Sellers shall pay any and all stamp, transfer and other similar taxes payable or determined to be payable in connection with the execution and delivery of this Agreement or the transfer of the Shares.

Section 10. 04. SPECIFIC PERFORMANCE. The Parties agree that any breach by one of them of any provision of this Agreement would irreparably injure the other Parties and that money damages would be an inadequate remedy therefor. Accordingly, each of the Parties agrees that the other Parties shall be entitled to one or more injunctions enjoining any such breach and requiring specific performance of the provisions of this Agreement and consents to the entry thereof, in addition to any other remedy to which such other Parties may be entitled at law or in equity.

Section 10. 05. SUCCESSORS AND ASSIGNS. The provisions of this Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns, whether so expressed or not; PROVIDED THAT no Party may assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without the consent of each other Party.

Section 10.06. GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the law of the State of Florida.

Section 10.07. JURISDICTION. Each of the Parties agree that any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby shall be brought in the United States District Court for the Southern District of Florida, West Palm Beach Division, or in any Florida State Circuit Court sitting in Palm Beach County, Florida, and that any cause of action arising out of this Agreement shall be deemed to have arisen from a transaction of business in the State of Florida, and each of the Parties hereby irrevocably consents to the jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding which is brought in any such court has been brought in an inconvenient forum.

Process in any such suit, action or proceeding may be served on any party anywhere in the world, whether within or without the jurisdiction of any such court. Without limiting the foregoing, each Party agrees that service of process on such Party as provided in Section 10.01 shall be deemed effective service of process on such Party.

Section 10.08. WAIVER OF JURY TRIAL. Each of the Parties Hereby Irrevocably Waives Any and All Right to Trial By Jury in Any Legal Proceeding Arising out of or Related to This Agreement or the Transactions Contemplated Hereby.

Section 10.09. COUNTERPARTS; THIRD PARTY BENEFICIARIES. This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement shall become effective when each Party shall have received a counterpart hereof signed by the other Party. No provision of this Agreement is intended to confer upon any Person other than the parties hereto any rights or remedies hereunder.

Section 10.10. ENTIRE AGREEMENT. This Agreement (including Exhibit A) constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement and supersedes all prior agreements and understandings, both oral and written, between the Parties with respect to the subject matter of this Agreement.

Section 10.11. CAPTIONS. The captions herein are included for convenience of reference only and shall be ignored in the construction or interpretation hereof.

第10条为杂项条款,分别规定了通知、协议的修改和放弃、合同磋商费用和合同签署交付有关印花税等税费的承担、实际履行、继受人和受让人、适用法律、司法管辖、陪审审理的放弃、合同副本、第三方权益以及完整协议和标题效力等。这些为通用条款,在一般的商务合同也很常见。

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

WACKENHUT CORRECTIONS CORPORATION

By: /s/ George C. Zoley

Name: George C. Zoley
Title: Chairman and Chief Executive Officer

TUHNEKCAW, INC.

By: /s/ Lars Norby Johansen

Name: Lars Norby Johansen
Title:

THE WACKENHUT CORPORATION

By: /s/ Lars Norby Johansen

Name: Lars Norby Johansen
Title:

GROUP 4 FALCK A/S

By: /s/ Lars Norby Johansen

____

Name: Lars Norby Johansen

Title:

EXHIBIT A

FINANCING LETTERS

[OMITTED]

这部分是协议的结尾部分。附件是一个融资函,限于篇幅,就此略去。



第三节　范例三:软件许可协议
(Software License Agreement)

This Agreement, is made and entered into on and as of the 27th day of March, 1998 ("Effective Date"), by and between Art Technology Group Inc. ("ATG"), a Massachusetts corporation, having its principal offices at 101 Huntington Avenue, 22nd Floor, Boston Massachusetts 02199 and Sun Microsystems, Inc., a Delaware corporation, ("Sun"), which has its principal place of business at 901 San Antonio Road, Palo Alto, California 94303.

WITNESSETH:

WHEREAS, ATG desires to grant to Sun and Sun desires to acquire from ATG a non-exclusive right and license to use certain computer software as hereinafter defined, in accordance with the terms and conditions set forth in this Agreement; and

NOW THEREFORE, in consideration of the premises, as well as the obligations herein made and undertaken, the parties do hereby covenant and agree as follows:

这是一个软件许可协议,由 ATG 授予 SUN 一非独家(non-exclusive)的软件许可。注意过渡句(NOW THEREFORE 一句)用到的"premise"是合同对价用语中常见用词,不是"promise"的笔误,指代上述的鉴于条款的内容。

1. DEFINITIONS

As used herein, the terms listed below shall have the following meanings:

1.1 "User or User(s)". An individual employed by Sun (whether as an employee, contractor, consultant) or third party with whom Sun has contracted to transact substantial business who is selected by Sun as being entitled to have access to and use the Licensed Program(s) and Licensed Documentation solely for the purposes of transacting Sun's business, provided, however, no party may be a "User" hereunder if Sun charges such User a fee or royalty for such use.

1.2 "Confidential Information" or "Proprietary Information". Any and all information disclosed by a party hereunder ("Discloser") to the other ("Recipient") in a written or other tangible form and which is clearly marked as being confidential or proprietary. Oral information shall not be deemed Confidential Information unless it is (a) designated as Confidential Information by the Discloser at the time of disclosure, and (b) summarized and identified as being Confidential Information in a writing, which is received by Recipient within thirty (30) days after disclosure.

1.3 "Enhancements". Changes and additions, other than Maintenance Modifications, to Licensed Program(s) or Licensed Documentation that adds significant new functions or substantially improved performance thereto by changes in or additions to the system design or coding. Enhancements include those features and functions that enhance and improve the capabilities of the existing Licensed Programs. These include all updates, bug fixes, performance improvements, screen navigation enhancements, new and expanded functionality which are consistent with the Licensed Products current and intended capabilities. In addition they

include functionality which is now part of a product or module specifically unbundled or marketed separately from the Licensed Programs where such functionality previously existed in the Licensed Program(s) and whether or not such functionalities and or products are marketed under different names or trademarks. Also included are functionalities and or products that may be marketed under different names or trademarks or marketed under new revision release numbers, but which perform or are intended to perform the same or enhanced functions which a reasonable person would anticipate to exist in the Licensed Programs, as well any products which are intended to function as replacement products to the Licensed Programs, even if such products include new and or additional functionality so long as such functionality is not easily separable from the Licensed Programs.

1.4 "Errors". Problems caused by operation of the computer code of the Licensed Program(s) or an incorrect statement or diagram in Licensed Documentation that produces incorrect results or causes incorrect or unanticipated actions to occur.

1.5 "Licensed Documentation" or "Documentation". The system documentation and the user manuals currently available from ATG for the Licensed Program(s).

1.6 "Licensed Program(s)". The computer applications or programs for which Sun is granted a license to use pursuant to this Agreement and as described more fully in Exhibit "C", including all Licensed Documentation currently available and as updated from time to time hereafter.

1.7 "Licensed Product(s)". All Licensed Program(s), Licensed Documentation, Enhancements, and Maintenance Modifications.

1.8 "Maintenance Modifications". Modifications or revisions to the Licensed Program (s) or Licensed Documentation that correct Errors therein.

1.9 "Notice". The formal notification required to be given in specified circumstances by one party to another.

1.10 "Solaris". Sun's UNIX operating system used by Sun for its internal use purposes.

1.11 "Specifications". The functional performance parameters of the Licensed Program(s) as further described in Exhibit "A".

1.12 "Sun's Hardware Platform". The then current hardware platform(s) on which Sun runs the Licensed Program(s) (including, but not limited to Sun's Unix and Sun's Java hardware platforms).

1.13 "Support Services". Services in support of the Licensed Program(s) provided by ATG to Sun after installation, as more particularly described in Exhibit "B".

这一定义条款中 Confidential information(保密信息)、Enhancement(改进)在软件许可中很常见。

2. GRANT OF LICENSE

2.1 Scope of License. ATG grants to Sun for each Licensed Program(s) for which Sun has paid to ATG the applicable license fees a NONTRANSFERABLE and NONEXCLUSIVE, worldwide, fully paid-up, perpetual right and license to:

a. Install, display, use and execute the Licensed Program(s) in machine readable form in support of the business activities of Sun in the quantities specified in Exhibit "C."

b. Use the Licensed Documentation but only in conjunction with installation, use and support of the Licensed Program(s).

c. Use all human language versions (including, but not limited to all double-byte enabled language versions), should ATG produce commercial non-English language versions of the Licensed Program(s) now or in the future, on all operating systems, on any hardware platform (including, but not limited to, Intel, Solaris x86,) of the Licensed Program(s), as permitted by section 2.1(a) above if and when ATG makes such language versions and or operating systems for the Licensed Program(s) available to the general marketplace. If the applicable license fees in Exhibit C have been paid, this right entitles Sun to choose single or multiple language and operating system versions of the Licensed Program(s) at the time of initial purchase and includes the right to substitute or exchange, in quantities and mix to be determined by Sun, previously purchased language and or operating system versions of the Licensed Program(s) for another language and or operating system version of the Licensed Program(s) at any time after initial purchase. In such event, ATG shall credit Sun with the full purchase price Sun paid for a version of the Licensed Program that Sun exchanges against the then-applicable license fees for the new version of the Licensed Programs that Sun elects to receive.

d. Use the Licensed Program(s) as permitted by 2.1(a) above by Sun's wholly owned or majority owned subsidiaries and any joint venture entity in which Sun Microsystems, Inc. or its Subsidiary holds an interest equal to or greater than fifty one percent (51%) of the total capital of such entity provided, however, that Sun shall cause each of the parties described herein to adhere to the obligations of Sun in protecting and observing the rights of ATG as set out in this Agreement.

2.2 Rights to Copy.

a. Upon Sun's payment of the applicable one-time fee for Documentation and Training Materials as described in Section 6.0 of Exhibit C, ATG grants to Sun the right and license to copy (subject to the terms of Article 7 herein) of all such Documentation and Training Materials. Two copies of Documentation shall be supplied by ATG in photo ready form (on 8.5" by 11" sized paper), or other mutually agreed form for each of the Licensed Program(s) licensed to Sun hereunder. From time to time ATG may create updated Training Material related to the Licensed Program(s) covered by this Agreement. Sun shall be entitled to two copies of the Training Material in photo ready form or electronic form at no additional cost to Sun. Sun shall reproduce ATG's copyright notice, where it appears on originals supplied by ATG, on all reproduced pages on all such Documentation copied by Sun. ATG further agrees to grant Sun the right to customize such Documentation and or Training Material as necessary for Sun to train its Users.

b. Sun's rights to use and copy Documentation and training material are concurrent with Sun's rights to use the Licensed Program(s), if the applicable license fees have been paid.

2.3 Backup and Distribution Copies.

a. Sun is granted the right to make backup copies of the Licensed Programs and to copy the Licensed Programs on to servers as deemed necessary by Sun to facilitate access to the Licensed Programs by its Users so long as the total number of servers and CPU's on which the Confidential Materials omitted and filed separately with the Securities and Exchange Commission. Asterisks denote omissions. Licensed Programs run doesn't exceed the number for which Sun has purchased licenses. Such copies shall not be considered a use of the Licensed Programs and shall not be included in counts used to determining the number of the Licensed Programs in use at Sun. Sun shall not use such copies to circumvent in any way the limitation on the number of copies of the Licensed Program(s) licensed by ATG for use by Sun hereunder.

2.4 Tracking of Licensed Programs.

a. The number of Licensed Programs shall be determined by counting the number of servers and CPU's on which the Licensed Programs run. Sun shall use reasonable efforts to track usage. It is agreed that Sun will provide reasonable access to ATG, in accordance with Sun's security regulations, within 30 days after receipt of a written request from ATG, but in no event shall such request be made by ATG more than twice in a calendar year.

b. In the event that it is determined that Sun has exceeded the number of authorized servers and CPU's on which the Licensed Programs are installed, Sun shall have the right to either immediately terminate such usage, at no cost to Sun, or to purchase additional Licensed Programs for such usage in accordance with the terms of this Agreement.

2.5 Solaris Commitment.

a. ATG shall and hereby agrees to use its best efforts to maintain binary compatibility with Sun's Solaris operating system, Sun's Hardware Platform (s) and the current release of Java, for a minimum period of [* *] from the Effective Date of this Agreement. ATG shall use its commercially best efforts to maintain such compatibility within [* *] after Sun releases updates, upgrades, or such new operating system and Sun Hardware platform(s) to the general marketplace.

b. ATG agrees to use reasonable efforts to maintain the compatibility of its Licensed Product (s) running on Solaris with the Licensed Products running on other operating systems and shall use reasonable efforts to release all Enhancements on Solaris within [* *] after release of such Enhancements on other operating systems for a minimum period of [* *] from the Effective Date of this Agreement.

2.6 Source Code in Escrow.

a. No rights are granted or licensed hereunder with respect to the Source Code for the Licensed Program (s), except that ATG shall, at Sun's Notice, place one copy of the Source Code for the Licensed Program(s) and Source Documentation with an escrow agent chosen by ATG and deemed acceptable by Sun, who shall be directed to release a copy of the Source Code and Documentation to the Licensed Program(s) to Sun, at Sun's expense, upon the occurrence of any of the events described in section 2.6(b), below. Upon occurrence of an event described in section 2.6(b), below, Sun shall have a nonexclusive right to use, modify and make working copies of the Source Code and Documentation solely for the purposes of supporting and maintaining the Licensed Program(s) and subject to the restrictions set forth in this Agreement.

b. Access to such escrowed Source Code and Documentation shall, however, not be available to Sun until such time as ATG shall (i) fail to supply Support Services for a period of three (3) consecutive months (ii) voluntarily terminate its business operations; (iii) file a voluntary petition for bankruptcy.

2.7 Contractors and 3rd Party Business Partners. The right and licenses granted to Sun herein to use the Licensed Program(s) shall permit the use of the Licensed Program(s) by contractors, subcontractors and third party business partners of Sun, provided that such Licensed Program(s) are used solely for business services to be provided exclusively to Sun by such contractors, subcontractors and third party business partners of Sun.

第2条是本软件许可协议的核心部分,即授予许可,包括许可的范围,复制的权利、备份和分发、许可程序的跟踪检查、软件与系统的兼容性、源代码第三方托管(escrow)和使用以及承包方和第三方商业合作伙伴合理使用许可的程序。源代码第三方托管逐渐成为软件许可的趋势,这和并购交易中第三方托管(escrow)支付价款的功能类似。

3. SUPPORT AND MAINTENANCE

3.1 For as long as ATG continues to offer Support Services to its other customers in general and Sun remains current in its payment obligations hereunder, ATG shall offer Support Services to Sun pursuant to provisions of Exhibit B.

3.2 As long as Sun pays the applicable annual Support Services fees, ATG shall support the current and at least one prior release of the Licensed Program(s). ATG's responsibility to support the prior release of the

Licensed Programs shall end [* *] following delivery to Sun of the current release version of the Licensed Program(s). Such Support Services shall, at a minimum, be in accordance with the Support Services described in Confidential Materials omitted and filed separately with the Securities and Exchange Commission. Asterisks denote omissions.
Exhibit B hereof, including porting of all major and minor bug fixes, Maintenance Modifications as well as all major and minor releases of Enhancements or updates. Sun shall, under no circumstances, be denied the right to purchase Support Services in accordance with Exhibit B, as long as ATG continues to offer any kind of Support Services to its other customers for the type of Licensed Program(s) licensed under this Agreement.

3.3 ATG agrees to continue to offer Support Services for the Licensed Program(s), running on the operating systems and platforms as described in Section 2.5 and all of Section 5 herein, for a minimum of [* *] from the Effective Date of this Agreement.

3.4 In the event that ATG materially fails for a period of [* *] to provide Support Services where there is a continuing agreement between the parties for ATG to provide Support Services for the Licensed Programs(s) and upon written Notice to ATG that such condition exist, Sun shall have the right to receive a copy of the source code in escrow and any other tools, technical documentation or additional source code, whether partially or fully complete, then in the possession of ATG or its escrow agent which may be necessary for Sun to fully maintain and support the Licensed Program(s). In the event ATG corrects the conditions described in Section 2.6(b) above, Sun shall return the Source Code to ATG and shall have no further rights to utilize the Source Code.

3.5 For a period of [* *] from delivery of any modification work performed by ATG on behalf of Sun, if ATG releases a new version or release of the Licensed Program(s) which renders any such modification work inoperable or unusable, including any significant reduction in performance levels, (collectively "Errors") then, in such an event, ATG commits to correct such Errors in accordance with the commitment level prescribed in Sections 2A, 2B and 2C of the Professional Service Agreement No. 99 - 0013, dated March 27, 1998, attached hereto as Exhibit D and incorporated herein by this reference.

3.6 In the event that Sun determines that category "X" or "A" Errors, as defined in Section 1.8 of Exhibit B, exist in the Licensed Program and where ATG cannot duplicate and or resolve such Errors remotely from ATG's support center, ATG commits to deliver support personnel on-site at Sun, upon requested by Sun. ATG shall be reimbursed only for its reasonable out-of-pocket costs in providing such support on-site at Sun.

3.7 ATG agrees to supply Sun with beta versions of new releases of the Licensed Program (s) as they become available on an "as-is" (no warranty) basis and to keep Sun informed of ATG's JAVA developments. In addition, ATG agrees to give Sun updates and, where requested by Sun, presentations on ATG's development plans [* *] starting with the Effective Date of this Agreement.

3.8 Availability of ATG Enhancements. If there is not an ongoing agreement between the parties for Support Services, ATG agrees to offer to Sun a license for Enhancements that ATG develops and offers generally to its other users of the Licensed Program (s) at the Support Service fees set forth in Exhibit C hereto or such other terms as may be agreed upon between the parties, for such Enhancements. ATG shall

advise Sun of the availability of any such Enhancements and of the license terms available for such Enhancements at such time as ATG makes Enhancements generally available to its other customers or the marketplace in general.

3.9 ATG agrees and acknowledges that Sun's ongoing ability to obtain Support Services for the Licensed Program(s) from ATG in accordance with this Article 3 is a major inducement to Sun entering into this Agreement.

第3条对客户和软件的支持和维护作出了详细的规定。含支持维护的时限、依据以及源代码的取得和使用、许可软件程序修正的提供和缺陷纠正、现场排除故障、新版软件程序测试版的提供、软件程序改进的提供以及支持服务系本协议订立的重要因素。这一条款也是软件许可协议必备的条款。

4. DISABLING CODE

4.1 ATG warrants that no disabling code currently exists in the Licensed Programs which would enable ATG to prevent Sun from enjoying the full benefit of the Licensed Programs permitted herein. To the extent any ATG Licensed Program(s) delivered to Sun in the future may contain such disabling ability, ATG is authorized to use such code solely to limit access to the Licensed Program(s) to the authorized number of ATG servers purchased by Sun. ATG shall not use such disabling code to enforce compliance with a term or condition of this Agreement absent a court order authorizing such action. ATG, at its sole discretion, may include software code to limit the users of the Licensed Programs to a particular servers, subject only to any necessary restrictions required by Sun to meet its network security requirements. Any improper use of the disabling code shall entitle Sun to obtain direct damages beyond the limitations of Article 10 herein.

第4条是关于禁用代码的规定,包括无禁用代码保证、禁用代码合理使用和不得滥用。

5. JAVA COMMITMENT

5.1 For a period of [* *] from the Effective Date of this Agreement and provided that Sun has not defaulted on payment of Support Services and further provided that Java remains competitive in the marketplace, ATG shall use best efforts to ensure that all Licensed Product(s) support Java such that ATG's server-based portions are written in Java code.

5.2 ATG acknowledges Sun's right to develop and build applications that will reside on top of the Licensed Program(s). ATG acknowledges Sun's right to use and exploit such applications including the right to market such applications to 3rd party customers, at no cost to Sun. Nothing in the foregoing statement shall be construed as giving Sun the rights to exploit or market for resale any of the underlying Licensed Program(s) except as specifically described elsewhere in this Agreement.

5.3 Upon delivery of a Java based version of the Licensed Program(s), ATG agrees to use best efforts to maintain binary compatibility with the then current release of Sun's Java Virtual Machine and to offer Support Services for the Java based version, for a minimum of [* *] from the Effective Date of this Agreement.

第5条是关于JAVA的约定,包括许可产品支持JAVA,被许可方的进一步开发应用程序以及JAVA的支持和维护等。

6. LICENSE FEES AND PAYMENTS

6.1 License Fee. In consideration of the licenses granted and Support Services provided hereunder, Sun shall pay to ATG the fees and charges specified in Exhibit C hereto.

6.2 Ordering Procedure.

a. Sun may from time to time issue individual purchase orders to ATG to obtain licenses (upon payment of the applicable fees) for the Licensed Program(s), Support Services, Training, and Consulting Service. Such purchase(s) order shall set out the applicable fees, payment terms, and other pertinent information and shall incorporate the terms of this Agreement by reference. Sun's purchase orders are subject to acceptance by ATG.

b. ATG agrees to tender a prompt, formal acknowledgement to each purchase order awarded by Sun and accepted by ATG pursuant to this Agreement. Any additional or different terms or conditions contained in such acknowledgement form shall not become a part of this Agreement.

6.3 Taxes. Unless indicated in Exhibit C or in an applicable purchase order, fees and charges are exclusive of any federal, state, or local excise, sales, or use taxes. Sun shall be responsible for such taxes when they are properly itemized on ATG's invoice and are submitted to Sun at the time of original purchase only. Sun shall not be responsible for any taxes based on ATG's net income.

6.4 Payment terms are net 30 days from the date of invoice referencing a Sun issues purchase order number, or in accordance with such other terms as may be listed in Exhibit C. Sun shall pay interest at a rate equal to the lesser of one percent (1%) over the then current prime rate quoted by Citibank, or the maximum rate allowed by law, which ever is less, on overdue payments not made by Sun on correct invoices.

Interest shall not be due unless Sun fails to cure the default condition within thirty (30) days after receipt of Notice that such condition exist. ATG shall be required to deliver one (1) Notice to cure, which shall be deemed sufficient notice for the current and any subsequent overdue payments.

6.5 Sun shall not be required to pay the disputed portion of any invoice, pending resolution of such dispute, provided that Notice of the dispute has been sent to ATG.

6.6 All invoices shall reference a valid Sun purchase order and shall be sent to the following address:

Sun Microsystems, Inc.
Accounts Payable Department
P.O. Box 7550
Mountain View, California 94039

第6条对许可的费用和支付作出了约定,包括订单规程、税费、支付期间、付款争议的处理和发票,等等。

7. DELIVERY AND INSTALLATION

7.1 The Licensed Product(s) shall be deemed "delivered" for purposes of this Agreement upon delivery of the Licensed Program(s).

7.2 ATG shall deliver the Licensed Program(s) and Documentation listed in Sec. 1 of Exhibit C promptly upon execution of this Agreement or on such other dates listed in Exhibit C.

7.3 All Licensed Program(s) and related documentation shall be shipped to the following address or to such other address as Sun may designate in writing to ATG.

Sun Microsystems Inc.
901 San Antonio Road
Palo Alto, California 94303
Attn:
Mail Stop:

8. ACCEPTANCE

Acceptance shall be effected upon delivery of the Licensed Program(s) to Sun at the address shown in Section 7.3 above.

第7条是交付和安装许可产品的约定含视为交付、许可程序和文件的交付以及交付方式和交付地点。第8条为验收条款即交付现场验收。

9. CONFIDENTIALITY & PROTECTION OF PROPRIETARY MATERIALS

9.1 Acknowledgment of Proprietary Rights.

a. Sun acknowledges ATG's claim that ATG holds all right, title, and interest in and to the Licensed Program(s) and Documentation, including any patents, trade secrets, trademarks and copyrights pertaining thereto.

9.2 Restrictions on Use, Copying and Disclosure.

a. The recipient of Confidential Information shall neither disclose Discloser's Confidential Information to any third party, nor use the same for any purpose other than as set forth in this Agreement. Recipient shall use the same degree of care as it uses to protect its own confidential information, but no less than reasonable care, to prevent the unauthorized use, dissemination or publication of the Confidential Information.

b. In addition to Recipient's right to disclose Confidential Information to its employees, Recipient shall have the right to disclose Confidential Information to any contractor or agent of Recipient or any employees, contractors, or agent of any majority-owned subsidiary of Recipient who have executed and delivered to recipient a confidentiality agreement containing terms and conditions substantially similar to those stated herein. Recipient will promptly advise Discloser of any unauthorized disclosure or use of Discloser's Confidential Information by any person.

c. This Agreement imposes no obligation upon Recipient with respect to Confidential Information which: (a) was in the possession of, or was known by Recipient without an obligation to maintain its confidentiality prior to its receipt from Discloser, (b) is or becomes generally known to the public without violation of this Agreement by Recipient, (c) is obtained by Recipient from a third party, without an obligation to keep such information confidential, or (d) is independently developed by Recipient without use of the Confidential Information.

d. Disclosure of Confidential Information will not be prohibited, if Recipient gives Discloser prior Notice and such Disclosure is: (a) compelled pursuant to a legal, judicial, or administrative proceeding, or (b) otherwise required by law.

9.3 Proprietary Legends. Sun may reproduce for internal distribution and internal use only and include on all copies of the Documentation all proprietary and copyright notices or legends of ATG as they now appear or as ATG may in the future furnish to Sun on the Documentation and on the media, manuals, and packaging containing the Documentation.

9.4 Survival of Obligation. Recipient's duty to protect Confidential Information received under this Agreement shall expire [* *] from the date of termination of this Agreement.

第9条是对专有资料的保密和保护。这是软件许可的必备条款。含专有权利的承认、使用、复制和披露的限制以及专有权和版权标识图例(legend)和保护义务的持续期间。

10. LIMITED WARRANTY, LIMITATION OF LIABILITY AND INDEMNITY

10.1 Patents & Copyrights. ATG warrants that ATG has the right and title to the Licensed Program(s) & Licensed Documentation and ATG has the legal right to sell licenses or sublicense the Licensed Program(s) & Licensed Documentation, and the licenses sold hereunder do not infringe upon or violate any published U.S. patents, copyrights, knowingly violate any trade secrets or other proprietary right of any third party. In the event of any breach of the foregoing warranties:

ATG shall defend, indemnify and hold harmless Sun against any such claim of direct or contributory infringement or violation, and ATG shall pay resulting costs, damages and attorney's fees finally awarded, provided that:

(i) Sun promptly notifies ATG in writing of the claim; and

(ii) ATG has control of the defense and all related settlement negotiations, provided however that Sun must approve in writing any settlements before they are executed, and

(iii) Sun fully cooperates with ATG, at ATG's cost, in the defense or settlement of such actions.

ATG's obligation under this Article is conditioned on Sun's agreement that if the Licensed Program(s), or the use or operation thereof, becomes, or in ATG's opinion is likely to become, the subject of such a claim, Sun will permit ATG at ATG's option and expense, either to procure the right for Sun to continue using the Licensed Program(s) or

to replace or modify the same so that it becomes non-infringing. If neither of the foregoing alternatives is available on terms which are reasonable in ATG's reasonable judgment, Sun will return or destroy the Licensed Program(s) on written request of the ATG. ATG shall pay to Sun for the returned Licensed Program(s) an amount equal to the License Fee paid for the Licensed Program(s) less an amount equal to depreciation on such Licensed Program(s) determined on a straight line three (3) year basis commencing on the Effective Date of this Agreement.

The Foregoing States The Entire Obligation Of ATG With Respect To Infringement Of Patents, Copyrights, Trade Secrets And Other Proprietary Rights.

10. 2 Limited Warranty On Conformity To ATG's Published Specifications. ATG warrants that for a period of ninety (90) days from the date of Acceptance of the Licensed Program(s) as described in Article 8 herein, (1) the Licensed Program(s) will be free of material defects in materials and workmanship under normal use; and (2) the Licensed Program(s) contains the features described in the Specifications documentation described in Exhibit A hereto. Otherwise the Licensed Program(s) are provided "As is". This warranty extends only to Sun as the original Licensee of the Licensed Program(s).

10. 3 Exclusive Remedy Of Nonconformity To ATG's Published Specifications. As the exclusive remedy of Sun for any nonconformity to ATG's published specifications or defect constituting an Error in the Licensed Program(s). ATG shall use reasonable commercial efforts to provide Maintenance Modifications to correct such Error. If ATG cannot

cure such Errors within ninety (90) days of Notice, ATG agrees to refund to Sun the total of all dollars paid by Sun to ATG on or after the Effective Date of this Agreement. However, ATG shall not be obligated to correct, cure, or otherwise remedy any Error in the Licensed Program(s) resulting from any (i) modifications to, misuse of or damage to the Licensed Program(s) other than by authorized users of Sun, or (ii) failure of Sun to provide Notice to ATG of the existence and nature of such nonconformity or defect within ninety (90) days from its discovery.

10.4 Warranty Of No Viruses. ATG warrants and represents that it used its best efforts in the development of proprietary elements of Licensed Program(s) ("Proprietary Software") to ensure that no viruses were coded into or introduced during the development. Should a virus be found to have emanated from the Licensed Program(s), ATG shall, at its own expense, use best efforts to cure the virus. In the event the virus causes actual loss of operational efficiency or loss of data, and provided that Sun has taken reasonable efforts to test the Licensed Program(s) for viruses prior to its distribution to Sun's end users, ATG shall use best efforts to assist Sun and to restore Sun to its original operating efficiency.

10.5 Year 2000 Compliance. ATG warrants that the Licensed Program(s) are fully Year 2000 Compliant and that the internal data handling will have no problems with the year 2000 or beyond. For the purposes of this article "Year 2000 Compliant" shall mean: "The capability for the Licensed Program(s), when used in accordance with the Product Documentation, to correctly process, provide and/or receive date data within and between the twentieth and twenty-first centuries. Within the limits of Java, year 2000 Compliance includes, but is not limited to, date andcentury recognition before and after January 1, 2000, calculations

to accommodate same century and multi-century formulas and date values, and date data interface values that reflect the century. In addition, leap year calculations must be accommodated and must not result in erroneous results or system failures."

10.6 Disclaimer. All Express Or Implied Conditions, Representations And Warranties, Including Any Implied Warranty Of Merchantability, Fitness For A Particular Purpose Are Hereby Disclaimed, Except As Specified In This Agreement Or Where Such Disclaimers Are Held To Be Legally Invalid.

10.7 Limitation on Liability. Except with respect to the liability of ATG under Articles 4 and 10, ATG shall not be liable to Sun under any claim, demand, or action arising out of or relating to ATG's performance or lack thereof under this Agreement for any special, indirect, incidental, exemplary, or consequential damages, whether or not ATG has been advised of the possibility of such claim, demand, or action.

第10条许可方的有限担保、责任和赔偿限制。涉及许可方对知识产权(含专利、商标、商业秘密和其他专有权利)的义务,许可产品符合使用说明的担保、无病毒担保、“千年虫”的担保以及特定用途的免责和责任限制。

11. TERM AND TERMINATION/SURVIVAL CLAUSE

11.1 This Agreement will come into force on the Effective Date and will remain in effect until terminated in accordance with the provisions of Article 11.2 below.

11.2 Termination by ATG. ATG may terminate this Agreement upon thirty (30) days written Notice to Sun for failure to pay the applicable License Fees, provided Sun fails to cure such condition within thirty (30) days of receipt of Notice that such condition exists for the first time ATG notifies Sun of this condition.

11.3 Termination by Sun. Sun may terminate this Agreement for convenience upon written Notice to ATG.

11.4 Rights and obligations under this Agreement which by their nature should survive, including, but not limited to any and all payment obligations invoiced prior to the termination or expiration hereof, will remain in effect after termination or expiration hereof.

第11条规定了协议的期间和终止、许可方和被许可方书面通知终止以及某些依其性质在终止后持续有效的条款权利和义务(包括但不限于协议终止或届满前已发出付款请求的支付义务)的效力。需要注意的是许可方提前30天书面通知终止附有条件,即被许可方未支付适用的许可费且收到许可方首次通知此等情形后30天内仍未能纠正。

12. NOTICES

Any provision of this Agreement that requires Notice from one party to the other will be satisfied if, without exception, the Notice is given in writing and delivered to the following address by a means evidenced by a signed delivery receipt of which a legible copy is furnished to the receiving party.

Such notice will be effective upon receipt:

ATG:
101 Huntington Avenue, 22nd Fl.
Boston, MA 02199
Attn: Vice President, Finance
Fax No.: (650) 655 - 2032

Sun:
Sun Microsystems, Inc.
2550 Garcia Avenue
Mountain View, CA 94043
Attn: Software Commodities Mgr.

Each party shall inform the other in writing of any change in the foregoing address information.

13. ASSIGNMENT

No assignment, delegation or other use of any right or duty under this Agreement may be made by either party without the prior written consent of the other party, other than by a purchaser of all or substantially all of the stock or assets of the assigning party or to a third party pursuant to a merger, or other corporate reorganization, provided that the assignee is capable of fulfilling and indicates in writing its intent to fulfill the obligations of the assigning party under this Agreement. Any other such assignment or delegation, or other transfer of interest attempted to be made without such written consent shall be void for all purposes.

14. INVALID PROVISIONS

If any provision of this Agreement is declared to be invalid under any applicable statute or rule of law, the parties agree that such invalidity shall not affect the remaining portions of this Agreement.

15. ATTORNEY'S FEES

In the event that suit is brought under this Agreement, reasonable attorney's fees and expert witness fees, as fixed by a court of competent jurisdiction or duly appointed Arbitrator, shall be awarded to the prevailing party.

16. TIMELY CLAIMS

No action for breach of this Agreement or any other action to enforce any claim arising out of or in connection with the subject matter of this Agreement shall be brought by either Party more than two (2) years after the cause of action has occurred.

17. WAIVER

Any waiver of any provision of this Agreement, or a delay by either party in the enforcement of any right hereunder, shall neither be construed as a continuing waiver nor create an expectation of non-enforcement of that or any other provision or right.

18. COMPLIANCE WITH U. S. EXPORT LAWS

Sun acknowledges that the laws and regulations of the United States restrict the export and re-export of commodities and technical data of United States origin, including the Licensed Program(s) and related

Documentation. Sun agrees that it will not export or re-export the Licensed Program(s), or related Documentation in any form without the appropriate United States and foreign government licenses. Sun agrees that its obligations pursuant to this Article shall survive and continue after the termination or expiration of this Agreement.

19. AMENDMENTS

No waiver, alteration or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of the party to be bound thereby.

20. CHOICE OF LAW

The rights and obligations of the parties hereto shall be construed under and be governed in all respects by the laws of the State of California without giving effect to principles of conflict of law.

21. PUBLICITY

Neither party shall publish or make known to others the subject matter of this Agreement, or any information obtained in connection therewith which is proprietary and confidential to the other party without first obtaining the prior written approval of the affected party, which shall not be unreasonably withheld. No advertising or publicity containing any reference to either party or any of its employees, either directly or by implication, shall be made use of by the other party without first obtaining prior written approval of the affected party. Such approvals shall be obtained in accordance with the provisions of Article 12 ("Notices").

22. HEADINGS NOT CONTROLLING

Headings used in this contract are for reference purposes only and shall not be deemed a part of this Agreement.

23. FORCE MAJEURE

Excepting provisions of this Agreement relating to payment of invoices, neither party shall be in default of the terms hereof if such action is due to a natural calamity, act of government, or similar causes beyond the control of such party.

24. OVERALL LIMIT OF LIABILITY

ATG's overall limit of liability to Sun related to the use of the Licensed Software shall not exceed the amounts paid to ATG, by Sun, for Licensed Program(s).

25. ENTIRE AGREEMENT

The provisions herein constitute the entire agreement between the parties with respect to the subject matter hereof and supersede all prior agreements, oral or written, and all other communications relating to the subject matter hereof. No amendment or modification of any provision of this Agreement will be effective unless set forth in a document that purports to amend this Agreement and that is executed by both parties hereto.

The following documents and the terms contained therein are incorporated herein by this reference:

Exhibit A, "Product Specifications"
Exhibit B, "Support Services"
Exhibit C, "Fees and Charges"
Exhibit D, "Professional Service Agreement No. 99 – 0013"

In the event of a conflict between the terms contained in the above listed Exhibits and the terms contained in this Agreement, the terms contained in the Exhibit shall supersede the conflicting terms of this Agreement.

The parties acknowledge they have read this Agreement and understand and agree to be bound by its terms and conditions.

第12条至第25条属于各类协议通用的杂项条款。包括通知、协议转让、无效规定(可分离性)、律师费、诉讼时效(timely claims)、弃权、遵守美国出口法律、协议的修改、适用的法律、协议的公开、标题的效力、不可抗力、许可方责任的总限额(overall limit)和完整协议,及附件的地位和效力。



IN WITNESS WHEREOF, the parties to this Agreement execute it through their duly authorized representatives.

Sun Microsystems, Inc.	Art Technology Group, Inc.
By: /s/ Frank Haran	By: /s/ Lauren J. Kelley
Frank Haran	Lauren J. Kelley
(Print Name)	(Print Name)
Title: GLOBAL COMMODITY MANAGER	Title: DIRECTOR OF WORLDWIDE SALES
Date: 3/27/97	Date: 4/2/98

协议的结尾、签字部分。



附录
SCHEDULE



附录一(Schedule A):

合同术语
Contract Terminology

一般合同法律术语
(General Contract and Legal Terms)

Arbitration 仲裁
Assignment of Rights and Delegation of Duties Clause 权利转让和义务让渡条款
Attachment 附件
Attorney-in-Fact 代理人
Attorneys Fees Clause 律师费条款
Breach of Contract 违约
Cancellation/Termination Clause (合同)解除/终止条款
Choice of Law/ Governing Law Clause 法律选择/适用法律条款
Compensation 赔偿
Contract 合同
Damages 损害赔偿金
Actual Damages 实际损害赔偿金
Incidental Damages 附带损害赔偿金
Consequential Damages 间接损害赔偿金
Punitive Damages 惩罚性损害赔偿金
Defamation 诽谤
Default 不履约/违约
Entire Agreement Clause 完整协议条款
Injunctive Relief 禁止令救济
Jurisdiction 法域/司法管辖权
Legal Consideration 对价
Legal Representatives, Successors and Assigns 法定代表人,继任者和受让人
Mediation 调解
Meeting of Minds 合意

Mutuality of Obligation 相互义务
Offer and Acceptance 要约与承诺
Parties 合同方/合同当事人
Release 解除/免除
Rescission (合同)解除
Severability Clause 效力瑕疵/可分离条款
Specific Performance 特别履行(通常是法院衡平救济的方式之一)
Standard of Reasonableness 合理性标准
Statute of Frauds 反欺诈法
Term 条款/期限
Time of the Essence Clause 重要时限条款
Venue 审理地/管辖地
Waiver 弃权(声明)
Warranty 担保

版权方面术语
(Copyright Terms)

Collective Work 集体作品
Copyright 版权/著作权
Copyright Infringement 侵犯版权/版权侵权
Exclusive and Non-Exclusive Rights 独占和非独占权利
Fair Use 合理使用
First North American Serial Rights/FNA Hard Copy Print Publication Rights 首次印刷权
Instructional Text 指示文本
Joint Work 合作作品
License 版权许可
Moral Rights 精神权利(始发欧洲,譬如声明作者身份和防止修改权)
Plagiarism 剽窃/抄袭
Public Domain 公众领域
Rights Reversion 权利复原
Subsidiary Rights 邻接版权(譬如翻译作品)
Supplementary Work 附属作品
Termination Rights Provision 终止权规定
Transferring or Assigning Copyright 版权转让

出版业术语
(Printing Industry Terms)

All Rights/Universal Rights Clause 全部/普遍权利条款
Byline 署名权
Editorial Acceptance 接受投稿
Kill Fee/ Rejection fee 退稿费
Outlets 出版/印刷地
Royalties 版税

工商业术语
(Business Terms)

Agencies/Brokers 代理/中介
Agent 代理人
At Will Employment 任意聘用关系(雇主可随时解雇雇员)

Bill Rate 薪资比率
Confidentiality/Non-Disclosure Clause 保密条款
Deliverables 可交付使用
Documentation House 文件编制室
Employee 雇员
Finder's Fee 中介佣金
Fixed Bid/ Fixed Contract 定额投标/定额合同
Indemnification/Hold Harmless Clause 保证赔偿豁免条款
Independent Contractor 独立缔约人
Invoice 发票
Mark up 标高价格
Margin 差价/保证金
Milestone 转捩点
Net Days 净天数
Non-Competition Clause/ Non-Compete/ Exclusivity/ Predatory Soliciting Clause 竞业禁止条款
Payroll Service Agencies 薪资服务中介
Perma-temp 长期临时工
Portfolio Copies 公文复件
Prompt Payment Discount 立即付款折扣
Proprietary Rights 所有权
Purchase Order 订单
Retainer 预聘费/律师费
Reviewer 审阅人/审查人
Scope of Employment 聘用职责
Side Agreement 附属协议
Subcontractor 次承包人
Temp 临时工
Vendor 供应商
Waiver of Benefits 津贴放弃
Work-for-Hire 加工承揽



附录二 (Schedule B):

商事合同生晦单词与短语
Obsure Words and Phrases Used in Business Contracts[1]

单词

Abet. Encourage or help someone to do something wrong. For example, 'the perpetrators were abided and abetted by the company representative'.

Abstain. To refrain from doing something. For example, 'members have the right to abstain form voting'.

Accrue. Acquire, gain. For example, 'it is anticipated that benefits will accrue to the company as a result of the co-operation agreement'.

Acquiescence. Consent which is implied from conduct. For example, 'the other party signaled their acquiescene by refraining from taking steps to protest'.

Adjudicate. Make a formal judgment on an undecided matter. For example, 'the court adjudicated on the case'.

[1] 引自 *Legal English*, Rupert Haigh, Cavendish Publishing Limited, 2004。

Ambiguity. Uncertain or inexact meaning. For example, 'this clause is ambiguous and should accordingly be redrafted'.

Annexes. Relevant documents attached to a contract or other legal document for ease of reference.

Annually. Every year.

Annul. To declare a contract to be no longer valid.

Arbitrator. An independent person who is appointed by agreement between parties to a contract or by a court to hear and decide a dispute. The process is known as *arbitration*.

Assent. To agree or concur. For example, 'the company is prepared to assent to that proposal'.

Barred. Prevented or forbidden. For example, 'the proposed claim is statute-barred'.

Binding. Legally enforceable. For example, 'this clause binds both parties'.

Breach. The infringing or violation of a right, duty or law. For example, 'Statchem have breached paragraph 14 of the contract by their actions'.

Clause. A sentence or paragraph in a contract.

Consent. Agreement or compliance with a course of action or proposal. For example, 'no assignment shall be valid unless both parties have given their consent in writing prior to the proposed assignment being made'.

Consignment. A delivery of goods. For example, 'the first consignment must be delivered on 14 April'.

Construction. Interpretation. For example, 'on proper construction of this clausek, it appears to mean that assignment is not permitted under the contract'.

Construed. Interpreted. For example, 'paragraph 16 shall be construed in the light of the provisions of Paragraph 17'.

Convene. To call, summon or assemble. For example, 'the parties convened in the meeting room'.

Corresponding. (1) Communicating by exchanging letters; (2) comparable or equivalent to another thing (eg, 'the corresponding obligations contained in this agreement').

Counterpart. (1) A document that exactly corresponds to the original. For example, 'a counterpart of this agreement shall be prepared'; (2) a person fulfilling a similar role in another organization. For example, 'I will telephone my counterpart to ask about her client's position in relation to the case'.

Covenant. An agreement of a term in an agreement. For example, 'the covenants contained in the lease agreement'.

Deadlock. A situation in which no progress can be made. For example, 'the negotiations have reached deadlock'.

Default. Failure to fulfil an obligation. For example, 'the company has defaulted on its repayment schedule'.

Delegation. The grant of authority to a person to act on behalf of one or more others for agreed purposes. For example, 'the parties are entitled to delegate authority to subcontractors'.

Derogation means to deviate from something. For example, 'the company derogated from the agreement'.

Designated. (1) Officially give a particular mane or status to (eg, 'John was designated "Managing Director"'); (2) appoint to a particular job (eg, 'John was designated Managing Director').

Determine. To decide or resolve. For example, "this issue shall be determined by means of the procedures which the company has established for the purpose'.

Detriment. Harm or damage. For example, 'the company has acted to its detriment in agreeing to a variation of the original contract'.

Discharge. To release form an obligation. For example, 'the parties shall be discharged from all liability once all the terms of the contract have been performed in full'.

Disclose. Make known, reveal. For example, 'the company disclosed certain information to the distributor'.

Dispose. To sell or transfer (property). For example, 'the company had to dispose of some of its assets in order to pay its debts'.

Elect. Decide, opt. For example, the 'parties may elect to refer the matter to arbitration if the dispute cannot be resolved by other means'.

Enforce. To compel, impose or put into effect. Hence enforceable (capable of being enforced). For example, 'the terms of the contract can be enforced if necessary'.

Entice. Attract by offering something pleasant or beneficial. For example, 'the company tried to entice their rival's employees to come and work for them'.

Essence. Something intrinsic or essential. For example, 'the essence of this case is whether or not the defendant was present at the scene'. The essence of a contract means the essential conditions without which the contract would not have been areed.

Exclusive. Restricted to certain parties. Hence non-exclusive: not restricted to certain parties. For example, 'Bondark Ltd. holds exclusive distribution rights in respect of the product in the defined territory'.

Execution. (1) The carrying out or performance of something (eg, the terms of a contract); (2) the signature of a contract. For example, 'the parties executed the contract'.

Express. Clearly stated. For example, 'the contract contains express warranties'.

Facilitate. To make easy or make easier. For example, 'implementation of the contract was facilitated by the assistance given by expert advisers'.

Fit. Suitable for a particular role or position. For example, 'the judge took the view that Mr Jones was not fit to run a public company'.

Fixture. An item, usually a piece of equipment or furniture, which is

fixed into position.

Forbearance. The act of refraining from enforcing a debt. For example, 'the suppliers' forbearance in extending credit to the company meant that the company was able to continue trading'.

Forthwith. Immediately, without delay. For example, 'the goods must be returned forthwith'.

Furnish. To provide or send something. For example, 'the distributor agrees to furnish sales information to the Company'.

Gratuitous. Given freely without anything being given in return. For example, 'he made a gratuitous promise to give ther the property'.

Hold. To find as a matter of law. For example, 'the court held that Stachem had breached the contract and were accordingly liable to pay damages'.

Implement. To carry out, perform or put into effect. For example, 'the provisions of paragraph 12 of the contract have now been implemented'.

Imply. To introduce (a term) into a contract as a result of law or to give effect to the intentions of the parties. An implied term is one regarded by the courts as necessary to give effect to the intentions of the parties, or one introduced into the contract by statute.

Induce. Persuade or influence someone to do something. For example, 'the parties were induced to enter into the contract'.

Infringe. To violate or interfere with the rights of another person. For example, 'the company infringed upon another company's intellectual property rights'.

Instrument. A legal document, usually one which directs that certain actions be taken (eg, a contract).

Invalid. Not legally enforceable or legally binding. For example, 'this is an invalid clause'.

Irrevocable. Not able to be revoked, ie, not able to be changed, reversed or recovered. For example, 'the parties made an irrevocable commitment'.

Issue. (1) To print, publish or distribute, for example, ' the company issued shares'. (2) A person's descendants.

Know-how. Practical knowledge or skill.

Liability. An obligation or duty imposed by law, or an amount of money owed to another person. For example, 'the company has liability to pay damages to the employees'.

Lockout. A situation in which an employer refuses to allow employees to enter the place of work until they agree to certain conditions.

Material. Relevant, important, essential. For example, 'breach of a material term of the contract can give the innocent party the right to rescind the contract'.

Mutual. (1) Experienced or done by two or more people equally; (2) (of two or more people) having the same specified relationship to each other; (3) shared by two or more people; (4) joint. For example, ' no assignment may take place without the parties' mutual agreement in writing'.

Nevertheless. Despite. For example, 'nevertheless, the contract remains invalid'.

Notice. Information or warning addressed to a party that something is going to happen or has happened; a notification. See also due notice next Glossary. For example, 'any notice required to be served under this contract must be served in accordance with paragraph 18'.

Notwithstanding. Despite. For example, 'the parties went ahead with the deal notwithstanding Statchem's financial problems'.

Null. Invalid, having no leal force. For example, ' the contract is null [and void]'.

Omission. A failure to do something that one was supposed to do. For example, 'an omission may render the contract void'.

Onerous. Involving much effort and difficulty. For example, 'the duties laid upon the company are onerous'.

Pass. Transfer to or inherit. For example, 'the property passed to his successors'.

Prefer (charges). To put forward for consideration by a court of law. Usually used with reference to criminal charges. For example, 'charges were preferred'.

Provenance. The origin or early history of something. For example, 'the provenance of this document is uncertain'.

Provision. A term or clause of a contract. For example, 'the contract contains provisions dealing with termination'.

Provisional. Made for present purposes and may be changed later. For example, 'a provisional agreement'.

Purport. Falsely claims to be. For example, 'a purported assignment is one made without the prior written agreement of both parties'.

Reasonable. (1) Fair and sensible; (2) appropriate in a particular situation; (3) fairly good; (4) not too expensive.

Rebut. Oppose by contrary evidence, disprove or contradict something. For example, 'this presumption can be rebutted on the production of evidence to the contrary'.

Recognise. To accept as legally valid. For example, 'the court refused to recognize the judgment made in the foreign court'.

Redemption. Return or payment of property offered as security for a debt. Redemption date is the date upon which this ocurrs. For example, 'redemption of the mortgage will take place when the last instalment is paid upon it'.

Redress. Legal remedy or relief. For example, 'the innocent party has the right to seek redress'.

Remedy. Any method available in law to enforce, protect or recover rights, usually available by seeking a court order. For example, 'the primary remedy is to claim damages'.

Render. Deliver, provide, present for inspection. For example, 'the

company agrees to render the goods for inspection'.

Revoke. To cancel, annul or withdraw. For example, 'we revoked the order we had placed'.

Severance. The removal of one part of the contract from the rest of the contract without affecting the validity of the rest of the contract. For example, 'the severance clause seeks to ensure that the contract will not be rendered wholly invalid if one part of it is detected'.

Solicit. Ask for or try to obtain something (eg, business) from someone. For example, 'the employee is prohibited form seeking to solicit business from the company'.

Stipulate. Specify, require or demand. Hence stipulation. For example, 'the contract stipulates that all payments be made in US dollars'.

Stipulation. An essential term or condition of an agreement. For example, 'the contract contains a stipulation that all payments be made in US dollars'.

Successor. A person or corporation that inherits something (eg, the benefit of a contract) from another person or corporation. For example, 'Statchem is the successor of Alftech and accordingly now has the benefit of Alftech's contracts with third parties'.

Sundry. Of various kinds. For example, 'telephones, televisions and sundry other appliances'.

Supersede. Take the place of, override. For example, 'this contract supersedes all previous agreements between parties'.

Term. (1) A substantive part of a contract which creates a contractual obligation. For example, 'one of the terms of the contract deals with delivery of goods'; (2) the period during which a contract is in force. For example, 'the term of this contract shall be five years from the date of execution'.

Transaction. An act or series of acts carried out in the ordinary course of business negotiations. For example, 'the company engaged in a number of transactions'.

Unenforceable. Not capable of being legally enforced, not legally binding. For example, 'this contract is unenforceable'.

Uphold. To confirm (eg, the validity of a decision). For example, 'the appeal court upheld the decision of the lower court'.

Usage: (1) the action of using something or the fact of being used (eg, 'a survey of water usage'); (2) the way in which words are used in a language (eg, 'this word is no longer in common usage').

Vendor. Seller.

Venue. The place at which something occurs or is located. For example, 'the arbitration venue shall be the International Chamber of Commerce in Geneva'.

Void. Having no legal effect. For example, 'the contract is void due to lack of consideration'.

Voidable. Capable of being set aside. For example, 'the contract is voidable as a result of the other party's breach'.

Whereas. While. This word is often used in recitals in contracts. For example, 'whereas the Company is the owner of certain intellectual property rights...'

短语

Accord and satification. The substitution and performance of a new set of obligations under a contract by means of which the parties to the contract are released from their original obligations.

Act of God. An accident or event which arises independently of human intervention and which is entirely due to natural causes (eg, an earthquake).

Actions, costs, claims and demands. A catch-all definition including court cases, costs, formal demands for payment, etc.

Aggregate amount. An amount calculated by combining different items.

Aggrieved party. A term used to describe a party to the contract in a situation in which that party has the right to bring a claim in respect of breach of contract by the other party to the contract. See also *innocent* party.

An adverse affect. A harmful or prejudicial effect.

Annexed hereto. Attached to this agreement.

Arising out of. Resulting from.

As contemplated by this agreement. As intended by this agreement.

As hereinafter defined. As defined later in the contract. These words alert the reader to the likelihood that the contract contains a definitions section in which the words ' the Territory ' will be given a defined meaning for the purpose of the contract.

As per... In accordance with...

At any time after the signature of this Agreement. Ever. The obligation is not time-limited.

Bear the cost of. Be responsible for paying the costs of .

By reason of. Because of.

Capacity to enter into and perform. Legal right to sign a contract so that it becomes legally enforceable and carry out the obligations it contains.

Circumstances beyond reasonable control. Circumstances which the party could not be expected to have any control over.

Collectively referred to herein. Referred to as a group of things in this contract.

Completion date. The date on which the main term of the contract are carried out and ownership of goods is transferred from one party to another.

Construed in accordance with. Interpreted according to.

Defaulting party. A party to a contract who has defaulted on his or her obligations. See also non-defauting party.

Defective part. A broken or faulty component.

Deliver up. Deliver, provide.

Discharge of contract/liability/obligation. The termination of a contract/liability or obligation usually by performance.

Disclosure letter. A document in which the sellers of a company set out all facts already revealed to the buyer which breach the warranties contained in the contract. It is usual practice for the buyer then to agree that it cannot sue for breach of warranty caused by this disclosure.

Due and owing. Owed; of money that must be paid by one party to another.

Due notice. Proper notice; notice in accordance with the requirements of the contract and/or the law.

Duly authorized representative. Someone who has been given authority by one of the relevant parties to do certain things, which are usually things which will legally bind that party.

Duly organised and validly existing. (of a company) organized according to the applicable company regulations, having proper legal status and not being bankrupt.

Duplicate contract. An exact copy of the original contract.

During the currency of this Agreement. During the period of this Contract.

Engaged in the business of. Involved in the business of.

Enters into this agreement. Accepts, signs this contract.

Except as expressly provided in this Agreement. Unless there is a clear statement to the contrary in some part of the contract.

Execution date. The date on which a contract is signed.

Execution of documents. The signature of documents so that they become legally enforceable.

Exhibits attached/annexed hereto. Particular relevant documents attached

to the contract as 'exhibits'.

Expiration of a time-period/limitation. When a time period/limitation has come to an end or run out.

Failure to perform. Failure to do something that was agreed to be done in the contract.

Finnaly settled by arbitration. Resolved by arbitration with no possibility of taking the dispute further in the event that one of the parties does not like the outcome.

From the date hereof. From the date this contract is signed.

Furnish with. Provide to (someone).

Give and execute all necessary consents. Provide all agreements that are required and sign and do all things necessary to ensure that they are legally enforceable.

Going concern. A viable, ongoing business which may, for example, be sold as such (therefore the sale price takes in to account the value of the goodwill of the business) rather than as a sale of individual assets.

Hold harmless. Indemnify.

In any manner that the parties may determine. In any manner that the parties may decide.

In consideration of. As a contractually binding promise made in return for the promise made by the other party.

Incorporated herein. Contained in this contact or to be treated by the parties as contained in the contract.

Incur expenses/fees. To run up or make oneself liable to pay expenses or fees.

In lieu of. Instead of.

Innocent party. A party to a contract who has not defaulted on his or her contractual obligations in circumstances where the other party has defaulted.

In respect of/in respect thereof. Concerning.

In satisfaction of debts. In payment of debts.

Instrument in writing. A formal written legal document.

In witness whereof. To confirm my agreement to the terms of this contract.

Legally binding. Legally enforceable.

Liable to the other. Responsible in law to the other.

Make good. Repair, replace or renew something.

Material breach. A serious breach of a major term of the contract.

Matters of a product liability nature. Matters relating to manufacturing defects in the products.

Mutual consent. Both parties agree (to a certain proposition).

Mutual covenants and agreements. Things both parties have agreed in the contract.

Negotiation, drafting and execution. All the stages of drawing up the agreement including negotiating it writing it and signing it so that it becomes legally enforceable.

Non-defaulting party. A party to a contract who has not defaulted on his or her contractual obligations. Also known as the innocent party in circumstances where the other party has defaulted on his or her contractual obligations.

Notice of Default. A formal document advising a party to a contract that he or she has failed to do something required to be done under the contract.

Notice shall be deemed served. Notice shall be treated or regarded for the purposes of this contract as having been served.

Notified from time to time hereunder. Advised to the other party when necessary under the terms of this contract.

Of even date herewith/hereof. Made on the same date as this agreement.

On behalf of. As a representative of.

Other documents and papers whatsoever. Any other documents and papers.

Payment falling due on. Payment becoming due to be made on a specified date.

Principal office. Main office or headquarters.

Prior written consent. Written agreement obtained beforehand.

Provided always that. So long as, if.

Public domain. Accessible to the public, forming part of public knowledge.

Purchased hereunder. Purchased in accordance with this contract.

Purported assignment. An invalid assignment claimed falsely to be a valid one.

Pursuant to. In accordance with.

Reasonable/best endeavours. Appropriate efforts or attempts.

Release all the claims. Abandon all the claims.

Renewed for further successive of two years. The contract will continue indefinitely in two-year periods following the end of the first two-year period.

Save as to. Except for.

Schedule 1 hereto. Schedule 1 of this contract.

Sell or otherwise dispose of. To sell or transfer (property) in some other way.

Set aside. Treat as no longer valid.

Set forth herein. Contained in this contract or document.

Settled amicably. Of a claim (or dispute) resolved without the need for court proceedings.

Shall be held by the parties. Shall be regarded by the parties as being such and such.

Shall procure that. Shall ensure that a specified action is done.

So served. Served in such a way.

Subject to the following terms. Dependent on or on the basis of the following terms.

Succeeding period. A period of time following one previously defined.

Take effect. Become legally enforceable.

Take or institute proceedings. To make a claim to civil court.

That law or statute as from time to time amended. The law or statute and any amendments that are made to it while the contract is still valid.

The company desires to appoint. The Company wishes to appoint.

The company hereby acknowledges. The company accepts as a result of this clause.

The parties acknowledge that. The parties accept (that something is the case).

The parties hereto. The parties to this contract.

The premises. (1) The building and land occupied by a business; (2) the theoretical bases of an argument.

The prevailing party. The party which wins in a court case or arbitration.

The provisions for termination hereinafter appearing. The clauses governing termination of the contract appearing later in this contract.

The seller and Buyer affirm. The parties declare.

The requisite skills. The skills necessary for performing a particular role or task.

The same/the said/the aforesaid. The thing previously referred to.

The Territory. The special geographical area within which a party is authorized to act on behalf of the other party to the contract.

The time of dispatch. The time of sending.

Undertakes to supply. Agrees to supply.

Which consent may not be withheld arbitrarily. Agreement must be given unless ther is good reason not to.

Without prejudice to the generality of the foregoing. Having no effect on the general meaning of the previous clauses in the contract.

Written mutual consent. The written agreement of both parties to the contract.



附录三(Schedule C):

相关法规节选
Extracts form Relevant Laws

《中华人民共和国民法通则》
GENERAL PRINCIPLES OF THE CIVIL LAW OF THE PEOPLE'S REPUBLIC OF CHINA

第五十三条 企业之间或者企业、事业单位之间联营,按照合同的约定各自独立经营的,它的权利和义务由合同约定,各自承担民事责任。

Article 53 If the contract for economic association of enterprises or of an enterprise and an institution specifies that each party shall conduct operations independently, it shall stipulate the rights and obligations of each party, and each party shall bear civil liability separately.

第七十二条 财产所有权的取得,不得违反法律规定。

按照合同或者其他合法方式取得财产的,财产所有权从财产交付时起转移,法律另有规定或者当事人另有约定的除外。

Article 72 Property ownership shall not be obtained in violation of the law.

Unless the law stipulates otherwise or the parties concerned have agreed on other arrangements, the ownership of property obtained by contract or by other lawful means shall be transferred simultaneously with the property itself.

第八十四条 债是按照合同的约定或者依照法律的规定,在当事人之间产生的特定的权利和义务关系。享有权利的人是债权人,负有义务的人是债务人。

债权人有权要求债务人按照合同的约定或者依照法律的规定履行义务。

Article 84 A debt represents a special relationship of rights and obligations established between the parties concerned, either according to the agreed terms of a contract or legal provisions. The party entitled to the rights shall be the creditor, and the party assuming the obligations shall be the debtor.

The creditor shall have the right to demand that the debtor fulfil his obligations as specified by the contract or according to legal provisions.

第八十五条 合同是当事人之间设立、变更、终止民事关系的协议。依法成立的合同,受法律保护。

Article 85 A contract shall be an agreement whereby the parties establish, change or terminate their civil relationship. Lawfully established contracts shall be protected by law.

第八十八条 合同的当事人应当按照合同的约定,全部履行自己的义务。

合同中有关质量、期限、地点或者价款约定不明确,按照合同有关条款内容不能确定,当事人又不能通过协商达成协议的,适用下列规定:

(一)质量要求不明确的,按照国家品质标准履行,没有国家品质标准的,按照通常标准履行。

(二)履行期限不明确的,债务人可以随时向债权人履行义务,债权人也可以随时要求债务人履行义务,但应当给对方必要的准备时间。

(三)履行地点不明确,给付货币的,在接受给付一方的所在地履行,其他标的在履行义务一方的所在地履行。

(四)价款约定不明确的,按照国家规定的价格履行;没有国家规定价格的,参照市场价格或者同类物品的价格或者同类劳务的报酬标准履行。

合同对专利申请权没有约定的,完成发明创造的当事人享有申请权。

合同对科技成果的使用权没有约定的,当事人都有使用的权利。

Article 88 The parties to a contract shall fully fulfill their obligations pursuant to the terms of the contract.

If a contract contains ambiguous terms regarding quality, time limit for

performance, place of performance, or price, and the intended meaning cannot be determined from the context of relevant terms in the contract, and if the parties cannot reach an agreement through consultation, the provisions below shall apply:

(1) If quality requirements are unclear, state quality standards shall apply; if there are no state quality standards, generally held standards shall apply.

(2) If the time limit for performance is unclear, the debtor may at his convenience fulfill his obligations towards the creditor; the creditor may also demand at any time that the debtor perform his obligations, but sufficient notice shall be given to the debtor.

(3) If the place of performance is unclear, and the payment is money, the performance shall be effected at the seat or place of residence of the party receiving the payment; if the payment is other than money, the performance shall be effected at the seat or place of residence of the party fulfilling the obligations.

(4) If the price agreed by the parties is unclear, the state-fixed price shall apply. If there is no state-fixed price, the price shall be based on market price or the price of a similar article or remuneration for a similar service.

If the contract does not contain an agreed term regarding rights to the use of scientific, any party who has completed an invention-creation shall have the right to apply for a patent.

If the contract does not contain an agreed term regarding rights to the use of scientific, and technological research achievements, the parties shall all have the right to use such achievements.

第八十九条 依照法律的规定或者按照当事人的约定,可以采用下列方式担保债务的履行:

(一)保证人向债权人保证债务人履行债务,债务人不履行债务的,按照约定由保证人履行或者承担连带责任;保证人履行债务后,有权向债务人追偿。

(二)债务人或者第三人可以提供一定的财产作为抵押物。债务人不履行债务的,债权人有权依照法律的规定以抵押物折价或者以变卖抵押物的价款优先得到偿还。

(三)当事人一方在法律规定的范围内可以向对方给付定金。债务人履行债务后,定金应当抵作价款或者收回。给付定金的一方不履行债务的,无权要求返还定金;接受定金的一方不履行债务的,应当双倍返还定金。

（四）按照合同约定一方占有对方的财产，对方不按照合同给付应付款项超过约定期限的，占有人有权留置该财产，依照法律的规定以留置财产折价或者以变卖该财产的价款优先得到偿还。

Article 89 In accordance with legal provisions the agreement between the parties on the performance of a debt may be guaranteed using the methods below:

(1) A guarantor may guarantee to the creditor that the debtor shall perform his debt. If the debtor defaults, the guarantor shall perform the debt or bear joint liability according to agreement. After performing the debt, the guarantor shall have the right to claim repayment from the debtor.

(2) The debtor or a third party may offer a specific property as a pledge. If the debtor defaults, the creditors shall be entitled to keep the pledge to offset the debt or have priority in satisfying his claim out of the proceeds from the sale of the pledge pursuant to relevant legal provisions.

(3) Within the limits of relevant legal provisions, a party may leave a deposit with the other party. After the debtor has discharged his debt, the deposit shall either be retained as partial payment of the debt or be returned. If the party who leaves the deposit defaults, he shall not be entitled to demand the return of the deposit; if the party who accepts the deposit defaults, he shall repay the deposit in double.

(4) If a party has possession of the other party's property according to contract and the other party violates the contract by failing to pay a required sum of money within the specified time limit, the possessor shall have a lien on the property and may keep the retained property to offset the debt or have priority in satisfying his claim out of the proceeds from the sale of the property pursuant to relevant legal provisions.

第九十一条 合同一方将合同的权利、义务全部或者部分转让给第三人的，应当取得合同另一方的同意，并不得牟利。依照法律规定应当由国家批准的合同，需经原批准机关批准。但是，法律另有规定或者原合同另有约定的除外。

Article 91 If a party to a contract transfers all or part of his contractual rights or obligations to a third party, he shall obtain the other party's consent and may not seek profits therefrom. Contracts which according to legal provisions are subject to state approval, such as transfers, must be approved by the authority

that originally approved the contract, unless the law or the original contract stipulates otherwise.

第一百零六条 公民、法人违反合同或者不履行其他义务的，应当承担民事责任。

公民、法人由于过错侵害国家的、集体的财产，侵害他人财产、人身的，应当承担民事责任。

没有过错，但法律规定应当承担民事责任的，应当承担民事责任。

Article 106 Citizens and legal persons who breach a contract or fail to fulfill other obligations shall bear civil liability.

Citizens and legal persons who through their fault encroach upon state or collective property or the property or person of other people shall bear civil liability.

Civil liability shall still be borne even in the absence of fault, if the law so stipulates.

第一百零七条 因不可抗力不能履行合同或者造成他人损害的，不承担民事责任，法律另有规定的除外。

Article 107 Civil liability shall not be borne for failure to perform a contract or damage to a third party if it is caused by force majeure, except as otherwise provided by law.

第一百一十一条 当事人一方不履行合同义务或者履行合同义务不符合约定条件的，另一方有权要求履行或者采取补救措施，并有权要求赔偿损失。

Article 111 If a party fails to fulfil its contractual obligations or violates the term of a contract while fulfilling the obligations, the other party shall have the right to demand fulfillment or the taking of remedial measures and claim compensation for its losses.

第一百一十二条 当事人一方违反合同的赔偿责任，应当相当于另一方因此所受到的损失。

当事人可以在合同中约定，一方违反合同时，向另一方支付一定数额的违约金；也可以在合同中约定对于违反合同而产生的损失赔偿额的计算方法。

Article 112 The party that breaches a contract shall be liable for compensation equal to the losses consequently suffered by the other party.

The parties may specify in a contract that if one party breaches the contract it

shall pay the other party a certain amount of breach of contract damages; they may also specify in the contract the method of assessing the compensation for any losses resulting from a breach of contract.

第一百一十三条 当事人双方都违反合同的,应当分别承担各自应负的民事责任。

Article 113 If both parties breach the contract, each party shall bear its respective civil liability.

第一百一十四条 当事人一方因另一方违反合同受到损失的,应当及时采取措施防止损失的扩大;没有及时采取措施致使损失扩大的,无权就扩大的损失要求赔偿。

Article 114 If one party is suffering losses owing to the other party's breach of contract, it shall take prompt measures to prevent the losses from increasing; if it does not promptly do so, it shall not have the right to claim compensation for the additional losses.

第一百一十五条 合同的变更或者解除,不影响当事人要求赔偿损失的权利。

Article 115 A party's right to claim compensation for losses shall not be affected by the alteration or termination of a contract.

第一百一十六条 当事人一方由于上级机关的原因,不能履行合同义务的,应当按照合同约定向另一方赔偿损失或者采取其他补救措施,再由上级机关对它因此受到的损失负责处理。

Article 116 If a party fails to fulfil its contractual obligations on account of a higher authority, it shall first compensate for the losses of the other party or take other remedial measures as contractually agreed and then the higher authority shall be responsible for settling the losses it sustained.

第一百四十五条 涉外合同的当事人可以选择处理合同争议所适用的法律,法律另有规定的除外。

涉外合同的当事人没有选择的,适用与合同有最密切联系的国家的法律。

Article 145 The parties to a contract involving foreign interests may choose

the law applicable to settlement of their contractual disputes, except as otherwise stipulated by law.

If the parties to a contract involving foreign interests have not made a choice, the law of the country to which the contract is most closely connected shall be applied.

第一百五十三条 本法所称的"不可抗力",是指不能预见、不能避免并不能克服的客观情况。

Article 153 For the purpose of this Law, "force majeure" means unforeseeable, unavoidable and insurmountable objective conditions.

《中华人民共和国公司法》

COMPANY LAW OF THE PEOPLE'S REPUBLIC OF CHINA

第二十八条 股东应当按期足额缴纳公司章程中规定的各自所认缴的出资额。股东以货币出资的,应当将货币出资足额存入有限责任公司在银行开设的账户;以非货币财产出资的,应当依法办理其财产权的转移手续。股东不按照前款规定缴纳出资的,除应当向公司足额缴纳外,还应当向已按期足额缴纳出资的股东承担违约责任。

Article 28 Each shareholder shall fully pay in the capital contribution it subscribes for in accordance with the articles of association. Any shareholder's capital contribution made in cash shall be deposited in full into a temporary bank account opened in the name of the limited liability company. The appropriate transfer procedures for the property rights in any non-financial asset used to contribute capital shall be followed in accordance with the law.

Where any shareholder fails to make a capital contribution as specified in the preceding paragraph, the relevant shareholder shall not only make full payment to the company but shall also be liable for breach of contract to shareholders who have complied with the requirements of the preceding paragraph.

第一百四十九条 董事、高级管理人员不得有下列行为:

(一)挪用公司资金;

(二)将公司资金以其个人名义或者以其他个人名义开立账户存储;

（三）违反公司章程的规定，未经股东会、股东大会或者董事会同意，将公司资金借贷给他人或者以公司财产为他人提供担保；

（四）违反公司章程的规定或者未经股东会、股东大会同意，与本公司订立合同或者进行交易；

（五）未经股东会或者股东大会同意，利用职务便利为自己或者他人谋取属于公司的商业机会，自营或者为他人经营与所任职公司同类的业务；

（六）接受他人与公司交易的佣金归为己有；

（七）擅自披露公司秘密；

（八）违反对公司忠实义务的其他行为。董事、高级管理人员违反前款规定所得的收入应当归公司所有。

Article 149 No director or senior manager may:

1. Misappropriate company funds;

2. Divert company funds into an account held in his own name or in the name of any other individual;

3. Loan company funds or provide any guaranty to any other person by using company property in violation of the articles of association without first obtaining the consent of a shareholders' meeting, a shareholders' assembly or the board of directors;

4. Become a party to any contract or business dealings with the company in violation of the articles of association without first obtaining the consent of a shareholders' meeting or a shareholders' assembly;

5. Seek business opportunities for himself or for any other person by taking advantage of his position, or operate on his own behalf or on behalf of any other person any business similar in nature to that of the company, without first obtaining the consent of a shareholders' meeting or a shareholders' assembly;

6. Personally accept any commission on any transaction to which the company is a party;

7. Unlawfully disclose confidential company information; or

8. Act in any way that is inconsistent with his duty of fidelity to the company.

Any income received by any director or senior manager in violation of this Article shall be treated as the property of the company.

《中华人民共和国合同法》
CONTRACT LAW OF THE PEOPLE'S REPUBLIC OF CHINA

第十二条 合同的内容由当事人约定,一般包括以下条款:
(一)当事人的名称或者姓名和住所;
(二)标的;
(三)数量;
(四)质量;
(五)价款或者报酬;
(六)履行期限、地点和方式;
(七)违约责任;
(八)解决争议的方法。
当事人可以参照各类合同的示范文本订立合同。

Article 12 The contents of a contract shall be agreed upon by the parties, and shall contain the following clauses in general:
(1) title or name and domicile of the parties;
(2) contract object;
(3) quantity;
(4) quality;
(5) price or remuneration;
(6) time limit, place and method of performance;
(7) liability for breach of contract; and
(8) methods to settle disputes.
The parties may conclude a contract by reference to the model text of each kind of contract.

第三十二条 当事人采用合同书形式订立合同的,自双方当事人签字或者盖章时合同成立。

Article 32 Where the parties conclude a contract in written form, the contract is established when both parties sign or affix a seal on it.

第三十三条 当事人采用信件、数据电文等形式订立合同的,可以在合同

成立之前要求签订确认书。签订确认书时合同成立。

Article 33 Where the parties conclude the contract in the form of a letter or data-telex, etc., they may require to sign a letter of confirmation before the conclusion of the contract. The contract shall be established at the time when the letter of confirmation is signed.

第五十二条 有下列情形之一的,合同无效:

(一)一方以欺诈、胁迫的手段订立合同,损害国家利益;

(二)恶意串通,损害国家、集体或者第三人利益;

(三)以合法形式掩盖非法目的;

(四)损害社会公共利益;

(五)违反法律、行政法规的强制性规定。

Article 52 A contract shall be void under any of the following circumstances:

(1) A contract is concluded through the use of fraud or coercion by one party, therefore damage the interests of the State;

(2) Malicious collusion is conducted to damage the interests of the State, a collective or a third party;

(3) An illegitimate purpose is concealed under the guise of legitimate acts;

(4) Damaging the public interests;

(5) Violating the mandatory provisions of the laws and administrative regulations.

第五十三条 合同中的下列免责条款无效:

(一)造成对方人身伤害的;

(二)因故意或者重大过失造成对方财产损失的。

Article 53 The following immunity clauses in a contract shall be void:

(1) those that cause personal injury to the other party;

(2) those that cause property damages to the other party as a result of deliberate intent or gross fault.

第五十四条 下列合同,当事人一方有权请求人民法院或者仲裁机构变更或者撤销:

(一)因重大误解订立的;

(二)在订立合同时显失公平的。

一方以欺诈、胁迫的手段或者乘人之危,使对方在违背真实意思的情况下订立的合同,受损害方有权请求人民法院或者仲裁机构变更或者撤销。

当事人请求变更的,人民法院或者仲裁机构不得撤销。

Article 54 A party shall have the right to request the people's court or an arbitration institution to modify or revoke the following contracts:

(1) those concluded as a result of serious misunderstanding;

(2) those that are obviously unfair at the time when concluding the contract.

If a contract is concluded by one party against the other party's true intentions through the use of fraud, coercion or exploitation of the other party's unfavorable position, the injured party shall have the right to request the people's court or an arbitration institution to modify or revoke it.

Where a party requests for modification, the people's court or the arbitration institution may not revoke the contract.

第七十七条 当事人协商一致,可以变更合同。

法律、行政法规规定变更合同应当办理批准、登记等手续的,依照其规定。

Article 77 A contract may be modified if the parties reach a consensus through consultation.

If the laws or administrative regulations stipulate that a contract shall be modified through the procedures of approval or registration, such provisions shall be followed.

第七十九条 债权人可以将合同的权利全部或者部分转让给第三人,但有下列情形之一的除外:

(一)根据合同性质不得转让;

(二)按照当事人约定不得转让;

(三)依照法律规定不得转让。

Article 79 The obligee may assign, wholly or in part, its rights under the contract to a third party, except for the following circumstances:

(1) The rights under the contract may not be assigned according to the character of the contract;

(2) The rights under the contract may not be assigned according to the agreement between the parties;

(3) The rights under the contract may not be assigned according to the

provisions of the laws.

第一百零八条 当事人一方明确表示或者以自己的行为表明不履行合同义务的,对方可以在履行期限届满之前要求其承担违约责任。

Article 108 Where one party to a contract expresses explicitly or indicates through his acts that he will not perform the contract, the other party may hold him liable for breach of contract before the performance has expired.

第一百一十一条 质量不符合约定的,应当按照当事人的约定承担违约责任。对违约责任没有约定或者约定不明确,依照本法第六十一条的规定仍不能确定的,受损害方根据标的的性质以及损失的大小,可以合理选择要求对方承担修理、更换、重作、退货、减少价款或者报酬等违约责任。

Article 111 If the quality fails to satisfy the terms of the contract, the breach of contract damages shall be borne according to the terms of the contract agreed upon by the parties. If there is no agreement in the contract on the liability for breach of contract or such agreement is unclear, nor can it be determined in accordance with the provisions of Article 61 of this Law, the damaged party may, in light of the nature of the object and the degree of losses, reasonably choose to request the other party to bear the liabilities for breach of contract such as repairing, substituting, reworking, returning the goods, or reducing the price or remuneration.

第一百一十二条 当事人一方不履行合同义务或者履行合同义务不符合约定的,在履行义务或者采取补救措施后,对方还有其他损失的,应当赔偿损失。

Article 112 Where one party to a contract fails to perform the contract obligations or his performance fails to satisfy the terms of the contract, the party shall, after performing his obligations or taking remedial measures, compensate for the losses, if the other party suffers from other losses.

第一百二十六条 涉外合同的当事人可以选择处理合同争议所适用的法律,但法律另有规定的除外。涉外合同的当事人没有选择的,适用与合同有最密切联系的国家的法律。

在中华人民共和国境内履行的中外合资经营企业合同、中外合作经营企

业合同、中外合作勘探开发自然资源合同,适用中华人民共和国法律。

Article 126 The parties to a contract involving foreign interests may choose the law applicable to the settlement of their contract disputes, except as otherwise stipulated by law. If the parties to a contract involving foreign interests have not made a choice, the law of the country to which the contract is most closely connected shall be applied.

The contracts for Chinese-foreign equity joint ventures, for Chinese- foreign contractual joint ventures and for Chinese-foreign cooperative exploration and development of natural resources to be performed within the territory of the People's Republic of China for which the laws of the People's Republic of China shall apply.

第一百二十八条 当事人可以通过和解或者调解解决合同争议。

当事人不愿和解、调解或者和解、调解不成的,可以根据仲裁协议向仲裁机构申请仲裁。涉外合同的当事人可以根据仲裁协议向中国仲裁机构或者其他仲裁机构申请仲裁。当事人没有订立仲裁协议或者仲裁协议无效的,可以向人民法院起诉。当事人应当履行发生法律效力的判决、仲裁裁决、调解书;拒不履行的,对方可以请求人民法院执行。

Article 128 The parties may resolve disputes relevant to the contract through settlement or conciliation. The parties may, if unwilling to resolve their disputes through settlement or conciliation or failing in the settlement or conciliation, apply to an arbitration institution for arbitration according to their arbitration agreement. The parties to a contract involving foreign interests may, according to their arbitration agreement, apply for arbitration to a Chinese arbitration institution or other arbitration institutions. If there is no arbitration agreement between the parties or the arbitration agreement is null and void, they may bring a lawsuit before the people's court. The parties shall perform the court judgments, arbitration awards or settlement agreement which has become effective. In case any refusal in respect to the performance, the other party may petition the people's court for execution.

《中华人民共和国仲裁法》
ARBITRATION LAW OF THE PEOPLE'S REPUBLIC OF CHINA

第二条 平等主体的公民、法人和其他组织之间发生的合同纠纷和其他财产权益纠纷,可以仲裁。

Article 2 Disputes over contracts and disputes over property rights and interests between citizens, legal persons and other organizations as equal subjects of law may be submitted to arbitration.

第四条 当事人采用仲裁方式解决纠纷,应当双方自愿,达成仲裁协议。没有仲裁协议,一方申请仲裁的,仲裁委员会不予受理。

Article 4 The parties adopting arbitration for dispute settlement shall reach an arbitration agreement on a mutually voluntary basis. An arbitration commission shall not accept an application for arbitration submitted by one of the parties in the absence of an arbitration agreement.

第五条 当事人达成仲裁协议,一方向人民法院起诉的,人民法院不予受理,但仲裁协议无效的除外。

Article 5 A people's court shall not accept an action initiated by one of the parties if the parties have concluded an arbitration agreement, unless the arbitration agreement is invalid.

第六条 仲裁委员会应当由当事人协议选定。

仲裁不实行级别管辖和地域管辖。

Article 6 An arbitration commission shall be selected by the parties by agreement.

The jurisdiction by level system and the district jurisdiction system shall not apply in arbitration.

第九条 仲裁实行一裁终局的制度。裁决作出后,当事人就同一纠纷再申请仲裁或者向人民法院起诉的,仲裁委员会或者人民法院不予受理。

裁决被人民法院依法裁定撤销或者不予执行的,当事人就该纠纷可以根据双方重新达成的仲裁协议申请仲裁,也可以向人民法院起诉。

Article 9 The single ruling system shall be applied in arbitration. The arbitration commission shall not accept any application for arbitration, nor shall a people's court accept any action submitted by the party in respect of the same dispute after an arbitration award has already been given in relation to that matter.

If the arbitration award is canceled or its enforcement has been disallowed by a people's court in accordance with the law, the parties may, in accordance with a new arbitration agreement between them in respect of the dispute, re-apply for arbitration or initiate legal proceedings with the people's court.

第六十五条 涉外经济贸易、运输和海事中发生的纠纷的仲裁,适用本章规定。本章没有规定的,适用本法其他有关规定。

Article 65 The provisions of this Chapter shall apply to all arbitration of disputes arising from foreign economic, trade, transportation or maritime matters. In the absence of provisions in this Chapter, other relevant provisions of this Law shall apply.



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